COPY

LOUIS J. ROUSSEL	:	16TH JUDICIAL DISTRICT COURT
V. NO. 42,338	:	PARISH OF ST. MARY
JAMES A. NOE	:	STATE OF LOUISIANA
FILED: _____	:	_____ DEPUTY CLERK OF COURT

MEMORANDUM IN SUPPORT OF
JOINT MOTION FOR SUMMARY JUDGMENT

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MAY IT PLEASE THE COURT:

INTRODUCTION

This memorandum is submitted on behalf of all defendants in this case in support of the Joint Motion for Summary Judgment as filed simultaneously herewith.

Parties:

The plaintiff, Louis J. Roussel, is an individual citizen and taxpayer of the State of Louisiana who brought suit, individually and on behalf of the State of Louisiana, to recover certain overriding royalty interests in state mineral leases alleged to have been fraudulently acquired, by public officials and co-conspirators in violation of their fiduciary duties.

The original petition named James A. Noe as the only defendant. This Honorable Court sustained[1] [and the Court of Appeal, First Circuit, affirmed[2]] defendant Noe's Peremptory Exception of Nonjoinder of Indispensable Parties; and by supplemental pleadings, the plaintiff named an additional 126 defendants as owners of undivided interests in the mineral leases involved.[3]

The original petition named the State Mineral Board as a defendant and sought a mandamus directing the State Mineral Board to cancel and

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[1]Reasons for Ruling on Exceptions dated August 12, 1971.

[2]Written Reasons for Judgment dated February 20, 1973 (274 So.2d 205).

[3]Amended Petition filed September 18, 1973.

rescind various resolutions approving assignments of interests in State Leases 340 and 341 by Mr. Noe, and further sought an injunction against the State Mineral Board to enjoin it from approving an assignment and mortgage by Mr. Noe of his interest in State Leases 340 and 341 in favor of the First National Bank of Commerce in New Orleans.

The trial court dismissed the State Mineral Board from the action and the Court of Appeals affirmed the dismissal.

This Honorable Court also sustained defendant Noe's Dilatory Exception of Lack of Procedural Capacity of the plaintiff to bring suit on behalf of the State of Louisiana. The Court of Appeal, First Circuit, State of Louisiana reversed:

> "...plaintiff is entitled to proceed as an individual taxpayer; and, that the Attorney General may intervene if he so desires and assert in his official capacity whatever position his judgment dictates is the proper one for the State of Louisiana."[4]

Following the return of the proceedings to the trial court, by "Motion to Intervene as Amicus Curiae", the Attorney General, as representative of the State of Louisiana, intervened in the proceedings "in a third party capacity as amicus curiae." The Motion to Intervene as Amicus Curiae contained the following paragraph:

"XXI.

> That in said capacity the State of Louisiana will be able to participate in the trial of this cause. If legally admissible evidence of fraud in developed, the State will be in a position to become a party plaintiff or to file a separate suit."

The Attorney General's office has participated in all discovery undertaken in this case and has elected not to become a party plaintiff or to file a separate suit.

A number of defendants who purchased their interests in the leases subsequent to the alleged conspiracy filed exceptions of no cause of action and no right of action based upon the "Louisiana Public Records Doctrine." This Honorable Court maintained the exceptions and dismissed those persons from the action. No appeal was taken from the judgments and they have become final.

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[4] op cit. (274 So.2d 209)

The current parties to this lawsuit are therefore the following:

1. Louis J. Roussel, the plaintiff whose procedural standing, as representative of the State of Louisiana, has been affirmed by the Court of Appeal;

2. 41 defendants being those persons who are either alleged conspirators or the heirs of such alleged conspirators; and

3. The State of Louisiana, as amicus curiae, represented by the Attorney General in his official capacity.

Evidence Supporting the Motion:

Plaintiff's petition alleged the existence of a conspiracy commencing prior to October 23, 1934 (date of incorporation of Win or Lose Corporation, a Louisiana profit corporation now liquidated).

Preparation for the defense of this lawsuit required counsels for defendants to locate documents concerning, and witnesses to, transactions which occurred more than 45 years ago. At the time the lawsuit was filed, James A. Noe was alive. Likewise, Wm. T. Burton, the lessee of the mineral leases involved, was alive. Due to their poor health, no deposition of either was taken and both have subsequently passed away. The following additional persons, who although alive at the time the suit was filed, have subsequently died:

1. Carl Campbell--employee of State Land Office who executed, as a witness, State Leases 309, 318, 321, 326, 327, 332, 334, 335, 336, 340 and 341.

2. Philip E. Gensler--Special Assistant to Attorney General Eugene Stanley from May 27, 1940 through 1941.

3. Sam Houston Jones--Governor from 1940 to 1944 and Ex-Officio Chairman of the State Mineral Board during the investigation into state mineral leases granted prior to creation of the State Mineral Board.

Prior to their deaths, no affidavits or depositions of these persons were taken in this suit.

Counsels for defendants located the only persons still alive who had knowledge of the facts and circumstances surrounding the transactions involved in this litigation:

1. Earle J. Christenberry--secretary to United States Senator Huey P. Long. Mr. Christenberry was one of three incorporators of Win or Lose Corporation and was its Secretary-Treasurer. Mr. Christenberry has executed an affidavit for use in this lawsuit describing his activities during the relevant period of time.

2. Dudley G. Couvillon--(first) Secretary of the State Mineral Board from its creation until December 13, 1943. Mr. Couvillon has been deposed in this lawsuit.

3. Edward L. Gladney--Special Assistant to Attorney General Eugene Stanley through May, 1943. Mr. Gladney rendered opinions on behalf of the Attorney General (which opinions have been authenticated in this lawsuit) reaching the conclusion that there was no evidence of fraud in the issuance of state mineral leases as investigated by him.

4. Alice Lee Grosjean (Tharpe)--An assistant to Huey P. Long who held for short periods of time during his gubernatorial administration, the offices of Supervisor of Public Accounts and Secretary of State. Mrs. Tharpe held one share of stock in the Win or Lose Corporation. Mrs. Tharpe has executed an affidavit for use in this lawsuit describing her activities.

5. William A. Romans--Field Supervisor for the State Mineral Board from May, 1938 to August 13, 1941. Mr Romans has been deposed in this lawsuit.

6. George A. Wilson--attorney for the Department of Minerals which temporarily took over the functions of the State Mineral Board in 1940 who served from May, 1940 until June, 1941. Mr. Wilson has executed an affidavit for use in this lawsuit. It describes his activities during the relevant period of time.

7. C. C. Wood--Special Assistant to Attorney General Eugene Stanley from October 2, 1940 through 1943. Mr. Wood participated in the analysis and investigation of state mineral leases granted prior to creation of the State Mineral Board and authored a letter dated May 18, 1943 publicly stating that the investigation revealed no evidence of fraud. Mr. Wood was deposed in this lawsuit on March 2, 1979, and has subsequently died.

The Joint Stipulation of the parties to this suit (as filed herewith) identifies an additional 47 persons who, directly or indirectly, participated in the transactions involved in this lawsuit, but who have died prior to institution of the suit.

Counsels for defendants have conducted an exhaustive investigation into the records of the Louisiana State Land Office, the State Mineral Board and the Attorney General's Office. Newspaper archives for the newspapers published during the relevant period of time in Baton Rouge, New Orleans, Shreveport and Lake Charles have been searched for relevant articles. In excess of 355 documents, the authenticity of which has been stipulated to by all parties in this suit, have been assembled to support this Joint Motion for Summary Judgment.

The Joint Motion for Summary Judgment is based upon the pleadings of the case; the depositions of Mr. Couvillon, Mr. Wood and Mr. Romans;

the affidavits of Mr. Christenberry, Mr. Wilson and Mrs. Tharpe; and the Joint Stipulation including both stipulations as to fact as well as to the documents incorporated therein. All of these documents have been filed in this case.

Defendants suggest to this Honorable Court that the documents filed in support of this Joint Motion for Summary Judgment are the result of the most exhaustive investigation into the mineral leases as could have been undertaken. Counsels for defendants recognize the voluminous nature of the materials filed in support of the Joint Motion for Summary Judgment, but urge that each document is an important link in presenting to this Honorable Court a full and complete picture of the transactions relating to these mineral leases.

It is respectfully submitted that there is no genuine issue of material fact and that these documents clearly and unquestionably establish the following:

(A) The requirements of the statutes governing mineral leasing of public properties in effect in 1934 through 1936 were specifically and carefully followed in the issuance of the mineral leases involved in this case.

(B) There is absolutely no evidence of either fraud or conspiracy in the issuance of the leases.

(C) The plaintiff's alleged "suspicious" circumstances surrounding the issuance of the leases were merely controversial political issues which were thoroughly and exhaustively argued during the 1936 and 1940 state elections. More particularly, Cleveland Dear and Philo Coco in the 1936 election and Sam Houston Jones and Eugene Stanley in the 1940 election made the details of the issuance of the leases a political issue and campaigned that, if elected, such leases would be thoroughly investigated to the end that illegally acquired interests would be returned to the State of Louisiana.

(D) After the election of Sam Houston Jones as Governor and Eugene Stanley as Attorney General, exhaustive investigations into the facts concerning the issuance of the leases were conducted by both the Attorney General's Office and the State Mineral Board. These investigations culminated in the inescapable conclusion by the Attorney General's Office that there was no evidence of fraud involved in the issuance of the leases.

(E) The State Mineral Board and Governor Jones refused to accept the conclusion of the Attorney General's Office that there was no evidence of fraud involved in the issuance of the leases and proceeded to employ special counsel to institute litigation against Independent Oil and Gas Company, Inc. (formerly Win or Lose Corporation) and Mr. Burton. Separate lawsuits were instituted. Each was extensively litigated over a period of years with the Burton case being ultimately heard by the Louisiana Supreme Court.

(F) Pertinent and informative lawsuits involving the Win or Lose Corporation and/or leases granted to Mr. Noe or Mr. Burton are the following:

(1) State, Ex Rel. Land Investment Company, Inc. v. Honorable James A. Noe, Governor, State of Louisiana, William T. Burton, The Texas Company, Number 11,112, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana;

(2) State of Louisiana, Ex Rel. C. M. Brenner v. Honorable James A. Noe, Governor, State of Louisiana, Et Al., Number 11,126, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana;

(3) Win or Lose Corporation v. Commissioner of Internal Revenue, United States Board of Tax Appeals, Appeal from Notice of Deficiency, IT: AJ: PM-25046-90D, dated April 27, 1939;

(4) United States of America v. James A. Noe, Et Al., Number 20,070, United States District Court, Eastern District of Louisiana;

(5) State of Louisiana v. William T. Burton, Number 22664, 14th Judicial District Court, Parish of Calcasieu, State of Louisiana;

(6) State of Louisiana v. Lucille May Grace, Et Al., Number 21,076, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana; and

(7) Justin C. Daspit and J. N. Marcantel v. State Mineral Board, Number 23,833, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

(G) The controversy between the State of Louisiana represented by Governor Jones and the State Mineral Board on one side and The Texas Company, Mr. Burton, Mr. Noe and Win or Lose Corporation on the other side was ultimately compromised under the terms of which The Texas Company, Mr. Burton, Mr. Noe and Win or Lose Corporation (Independent Oil and Gas Company, Inc.) released or surrendered to the State of Louisiana in excess of one million acres which had been originally included within the mineral leases in question and the State of Louisiana confirmed and ratified the mineral leases as to the remaining or retained acreage. Additionally, the lawsuits referred to in paragraph E above and in which the State of Louisiana was a party were dismissed by the State of Louisiana with prejudice as a result of the settlement of the overall controversy between the respective parties.

(H) The issuance of state mineral leases in which Win or Lose Corporation owned an interest stirred a highly publicized controversy that lasted more than ten years. The newspapers of the day gave full coverage to the following matters relevant to this litigation:

(1) issuance of the state mineral leases were campaign issues during the state elections for 1936 and 1940; (2) the investigations by the Attorney General's Office and by the State Mineral Board; (3) failure of the State Mineral Board to accept the decision of the Attorney General's Office that there was no legally admissible evidence of fraud involved in the issuance of the leases; (4) lawsuits filed by the State Mineral Board against Win or Lose Corporation and Mr. Burton

and various income tax trials of the parties involved; and (5) settlement of the controversy between the parties, including the ratification of the leases. (Approximately 150 representative newspaper articles of New Orleans, Baton Rouge, Shreveport and Lake Charles are included in the documents supporting the Joint Motion for Summary Judgment.)

(I) Subsequent to the settlement of the matter and ratification of the leases, The Texas Company and its successor, Texaco, Inc., have made an investment expense in excess of $772,697,252.00 in the development of State Leases 340 and 341 and the State of Louisiana has accepted from the Texas Company and its successor, Texaco, Inc. in excess of $50,000.000.00 as royalties from production under State Leases 340 and 341. The acreage released to the State of Louisiana pursuant to the settlement agreements by Mr. Burton, Mr. Noe, Win or Lose Corporation (Independent Oil and Gas Company, Inc.) and The Texas Company under State Lease 340 has been subsequently leased by the State of Louisiana to other parties and the State has received more than $17,570,655.20 in the form of bonuses, rentals and royalties for such subsequently issued leases.

(J) The State of Louisiana has certified to the Secretary of the Interior of the United States, in accordance with the Outer Continental Shelf Lands Act, that State Lease 340, "as amended by instrument dated November 18, 1943" (the settlement agreement), was in full force and effect.

(K) The State Mineral Board has approved more than 200 conveyances, assignments, mortgages production payments, division orders, etc. concerning interests in State Lease 340 since ratification of the lease in 1943.

Defenses Supported by Documents Filed with Joint Motion for Summary Judgment:

It is respectfully submitted that the facts outlined above, and to be more particularly developed in the remainder of this memorandum, conclusively establish and support the following conclusions and/or defenses to this litigation:

(A) The state mineral leases involved in this case were issued in accordance with the law in effect at the time and neither fraud nor conspiracy was involved.

(B) During the relevent period of time, there was no prohibition against defendants or their respective ancestors in title acquiring an interest in state mineral leases.

(C) The release and compromise agreements between the State Mineral Board, The Texas Company, Mr. Burton and Win or Lose Corporation (Independent Oil and Gas Company, Inc.) in 1943 bar prosecution of this suit.

(D) Prosecution of this suit is barred by the well recognized and judicially accepted principle and doctrine of estoppel.

Propriety of the Joint Motion for Summary Judgment:

Defendants have filed a Joint Motion for Summary Judgment in accord-

ance with Articles 966, et seq. of the Louisiana Code of Civil Procedure. Those articles provide that the judgment sought shall be rendered if there is "no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law." (Louisiana Code of Civil Procedure, Article 966)

Defendants have carefully and painstakingly assembled the extensive documentation supporting the Joint Motion for Summary Judgment. Defendants have accounted for all persons who could reasonably be expected to have knowledge of the issues involved in the lawsuit. The records of the State Land Office, the Attorney General's Office and the State Mineral Board have been exhaustively searched to locate the hundreds of documents pertinent to the motion. Newspaper archives of the major cities of the State were reviewed on a day by day basis for the entire relevant period. Defendants submit that the record compiled reveals no "genuine" issue of "material" fact and that defendants are entitled to judgment as a matter of law.

Defendants recognize that summary judgment is not a substitute for trial on the merits. It is respectfully submitted, however, that the purpose of a summary judgment is to relieve parties of the burden of a trial on the merits when the pleadings of the case are not supported by the evidence available.

This precise point was recognized in Landry v. E. A. Caldwell, Inc. 280 So.2d 231, 235 (La. App. 1st Cir. 1973):

> "It is well settled that the primary purpose of summary judgment procedure is to minimize and discourage the judicial urging of well pleaded but factually frivolous claims. Perry v. Reliance Insurance Co. of Philadelphia, La. App., 157 So. 2d 903.
>
> "Summary judgment shall lie where the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to a material fact, and that mover is entitled to judgment as a matter of law LSA-C.C.P. art. 966.
>
> "When a motion for summary judgment is made and supported by affidavits, answers to interrogatories and admissions of record, the adverse party may not rest on the mere allegations or denials contained in his pleadings but must, by affidavit or otherwise, counter movant's offerings and show specific facts which establish a dispute as to a genuine issue which must be resolved by trial. If the adverse party does not so respond, summary judgment shall be rendered against him, if appropriate. LSA-C.C.P. art. 967.

"On trial of a motion for summary judgment, the burden of proof initially rests upon movant to show convincingly, either by affidavits, depositions or other admissible proof, that there is an absence of a genuine issue of material fact between the litigants. All reasonable doubt as to the discharge of said onus shall be resolved against movant and in favor of trial on the merits. Until movant discharges this burden, the obligation of countering by the adverse party does not arise. Once movant has discharged said burden, however, movant's adversary must show by admissible evidence that a genuine issue of material fact does exist. Perry above; Latter & Blum, Inc. v. Von Ruekfrang, La. App., 249 So. 2d 229." (280 So. 2d 235) (Emphasis added)

See also Garlington v. Kingsley, 277 So. 2d. 183 (La. App. 3rd Cir. 1973), where the following language appears:

"If the mover at the trial of a motion for summary judgment produces convincing proof, by affidavits or other receivable evidence, of the facts upon which the motion is based, and no counter-affidavits or other receivable evidence are offered by the opposing party to contradict that proof, then a conclusion may be justified that there is no genuine issue as to the facts so proved, even though allegations to the contrary might be contained in the pleadings LSA-C.C.P. Arts. 966 and 967; Joiner v. Lenee, 213 So. 2d 136 (La. App. 3rd Cir. 1968); Roy & Roy v. Riddle, supra; Duplechain v. Houston Fire & Casualty Insurance Company, 155 So. 2d. 459 (La. App. 3rd Cir. 1963)." (277 So. 2d 186) (Emphasis added)

See also Trahan v. Liberty Mutual Ins. Co., 348 So.2d 205 (La. App. 3rd Cir. 1977).

FACTS

Plaintiff's petition alleges that Mr. Burton was an "interposed party" who acquired the overriding royalty interests involved in this case on behalf of alleged conspirators. The documents supporting the Joint Motion for Summary Judgment establish that Mr. Burton (in addition to having other business interests) was an independent leasebroker who first obtained a state mineral lease in 1920. Thus, to put this case in perspective, it is necessary to begin in 1920 with the issuance of State Lease 42 to Mr. Burton by Governor Parker.

The leasing law in effect at the time of the issuance of State Lease 42 was Act 258 of 1912. That act allowed the governor to accept the bid which he considered to be "to the best interest of the State". That same act, as amended by Act 315 of 1926, was effective during the time relevant to the allegations of plaintiff's petition. Act 315 of 1926 merely amended the original statute to provide that the governor could award leases "to the highest bidders therefor under such terms and conditions as to him

seem proper." Mineral leases contain various elements, i. e., bonus, royalty, rental, etc., which must be considered in determining the "highest" bid. Neither act defined the terms for a state mineral lease nor limited the governor's discretion in that regard. Thus, both acts permitted the governor to award leases in a discretionary manner and there is no significant difference between the law in effect in 1920 and the law in effect at all times relevant to this case.

Documents numbered 1-6 attached to the Joint Stipulation concern State Lease 42. They reflect that three persons, Charles O. Noble, I. F. Turnbull and Mr. Burton, submitted bids. It is significant that each bid included one or more of the following elements: cash bonus, drilling committment, yearly rentals, royalty payments, protection from drainage and protection from litigation. The cash bonus, yearly rentals and other terms varied with each bid. Mr. Burton's bid offered the highest cash bonus and highest yearly rental. (Document 3) The Turnbull and Noble bids contained elements absent from the Burton bid. (Documents 1-2) Thus, in accordance with the statute, Governor Parker was faced with the decision of which bid would be "to the best interest of the State."

On September 23, 1920 a meeting was held in Governor Parker's office attended by each bidder and his attorney. Governor Parker, Lieutenant Governor Bouanchaud and Register of State Lands Fred Grace also attended the meeting. Summaries of each bid were prepared and compared. (Document 4) Governor Parker requested an opinion from Attorney General A. V. Coco. The decision was reached that the bid offering the highest cash bonus was "to the best interest of the State" since the other elements were speculative. (Document 4) Thus, Mr. Burton's bid, which contained the highest cash bonus, was accepted.

The State Lease 42 transaction is important because it establishes a precedent at a time unrelated to the allegations of the plaintiff in this case, that public policy requires granting state mineral leases based upon the highest cash bonus. This policy decision reached jointly by the Governor, the Attorney General, the Lieutenant Governor and the Register of State Lands in October, 1920, after a careful study of the issues, was

consistently followed in each of the leases involved in this lawsuit.

Organization of Win or Lose Corporation:

Plaintiff's petition alleges a fraudulent conspiracy participated in by James A. Noe, Oscar K. Allen, Huey P. Long, Earle J. Christenberry, Alice Lee Grosjean (now Tharpe) and Seymour Weiss. When Win or Lose Corporation was organized, Oscar K. Allen was Governor; Mr. Noe was a State Senator and President Pro Tempore of the Louisiana Senate; Alice Lee Grosjean was an Assistant to Huey P. Long but held no public office; Huey P. Long was a United States Senator; and Mr. Christenberry was Secretary to Huey P. Long but held no public office; Seymour Weiss was a long time business associate of Mr. Noe, Huey P. Long and Mr. Christenberry but likewise held no public office.

Huey P. Long died on September 10, 1935; Oscar K. Allen died on January 28, 1936; (both deaths occurred prior to the letting of either State Lease 340 or 341); Seymour Weiss died on September 17, 1969; and Mr. Noe died subsequent to institution of this lawsuit on October 18, 1976. Thus, the only alleged co-conspirators still alive are Mrs. Tharpe and Mr. Christenberry. Each has given an affidavit which has been filed in these proceedings.

The affidavit of Alice Lee Grosjean Tharpe established that, prior to his death, Senator Long dictated a memo to her concerning the organization of a "corporation" and that she was to receive one share of its stock in appreciation for her services. According to the affidavit, she had no further discussion with Senator Long concerning Win or Lose Corporation. Mrs. Tharpe stated that she was not familiar with any of the details of the acquisition of interests in the state mineral leases and that her knowledge of the circumstances of the letting of the leases came from the political charges and countercharges during the late 1930's and early 1940's.

A portion of the affidavit is as follows:

> "... that she never discussed with Huey P. Long any of the circumstances respecting either the actual formation of Win or Lose Corporation or the acquisition of the State Lease interests; that neither Seymour Weiss, Governor Allen, William T. Burton nor James A. Noe, while living, ever discussed with deponent any details of the letting of the State Leases, respecting which Win or Lose acquired overriding royalty interests, or the circum-

stances and details of the acquisition by Win or Lose of overriding royalty interests in said leases...."

Likewise, the participation of Earle J. Christenberry in the affairs of Win or Lose Corporation was limited to his clerical services. The Notary, Alfred Danziger, dictated an act of incorporation to him. Mr. Christenberry's original understanding was that he was given a nominal share of stock to fulfill a requirement of law.

His affidavit states as follows:

"Deponent was not intimate with any details of the acquisition of the interests in the State of Louisiana Oil, Gas and Mineral Leases by the Win or Lose Corporation. The only exposure that deponent ever had to the circumstances of the letting of such leases came from the public political charges and counter charges during the late 1930's and the early 1940's. Deponent never discussed with Huey P. Long any of the circumstances respecting either the formation of Win or Lose Corporation or the acquisition of the State Lease interests, and he, deponent, was never aware that Huey P. Long had any interest in the Win or Lose Corporation while Long was living and only became aware of the Long family interest in Win or Lose when he attended a meeting of the shareholders of Win or Lose Corporation, after Mrs. Long had concluded her term as United States Senator, and found Mrs. Long present at the meeting. Neither Seymour Weiss nor James A. Noe, while living, ever discussed with deponent any details of the letting of the State Leases, respecting which Win or Lose acquired overriding royalty interests, or the circumstances and details of the acquisition by Win or Lose of overriding royalty interests in said leases."

There is no evidence in the record of this case and to establish that defendants, Earl J. Christenberry or Alice Lee Grosjean Tharpe, participated in a conspiracy concerning the organization of Win or Lose Corporation or the acquisition of interests in state mineral leases.

Historical documents submitted in support of the Joint Motion for Summary Judgment shed further light on the creation of Win or Lose Corporation. The organization of the corporation was the subject of testimony in an income tax trial involving James A. Noe and Win or Lose Corporation.[5] While the transcript of the trial was never prepared, the case was meticulously followed by the newspapers of the day. According to the New Orleans Times Picayune report of April 10, 1942, (Document 341) Noe testified as follows concerning the secrecy surrounding the organization of Win or Lose Corporation:

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[5]United States of America v. James A. Noe, Et Al., number 20,070, United States District Court, Eastern District of Louisiana.

* * *

"Noe took the witness stand on his own behalf late in the afternoon. Responding to questions by Wilkinson, he said he is 51 years old, a resident of Monroe, with a wife, a daughter, aged 18, a son aged 11 and a daughter aged 8. He is in the oil and gas business, owns a couple of plantations, the radio station WNOE in New Orleans, and a half interest in a radio station in Arkansas, KOTM. His experience in the oil and gas business has been from 'digging ditches on up.'"

* * *

"'Was anything said at the time about the public getting knowledge of Long's connection?'" asked Attorney Hugh M. Wilkinson, representing the defendant Noe.

"'Long said he had some bitter enemies in the state, particularly newspapers, and he didn't want to be known in any large business dealings because the newspapers would take it up and do everything they could to hurt him politically,' said Noe.

"'Did he have any attitude in politics as to corporations?'

"'Yes, he burnt them up.'

"'Was his position for the individual and against the corporate interests, or for the corporate interests and against the individual?'

"'He wanted to see that the corporate interests played fair with the people and got reductions in electric rates, gas rates, and so forth.'

"'Was Senator Long for the individual and against the corporate interests?' he again asked Noe.

"'All the way along.'

"'And in his speeches on the stump?'

"'Yes.'

"'Did he ever let himself be known publicly as an officer or director in any corporation?'

"'No.'"

* * *

"'Long told me, "Jimmy I want you to promise me on your word of honor that you will never say anything about this where it will get out in public. It is all right, but will hurt me publically.'" (Document 341)

Likewise, the Baton Rouge Morning Advocate of April 10, 1942 (Document 342) reported the same testimony as follows:

* * *

"Asked further about Long's desire for secrecy, Noe said that at that time, Long was berating the corporations.

"'Did Long have a well established position in political life of upholding citizen's rights against the corporations?' Wilkinson asked.

"'Yes, all the way along. He burnt 'em up,' Noe replied.

"'Huey told me he wanted me to give him my word that I would never say anything so it would get out publicly that he was in the corporation. He said what he was doing was perfectly all right, but it would hurt him politically.

"'What was the purpose of issuing the stock in blank as you did?' Wilkinson asked.

"'So they could have theirs without the public knowing the ownership,' Noe replied.

"'And did you have any other purpose than to protect Long and Allen for political reasons.'

"'That was the only reason in the world." (Document 342)

* * *

Despite the fact that the organization of Win or Lose Corporation has been the subject of much speculation over the years, there is no evidence establishing that Win or Lose was created as part of a conspiracy to defraud the State of Louisiana. The secrecy concerning the corporation related to the sensitive political position of the parties and not to purposes of fraud.

Issuance of the Leases Involved:

As stated above, the Louisiana statute governing the issuance of state mineral leases during the relevant period of time was Act 30 of 1915 as amended by Act 315 of 1926.[6] Simply stated, the law provided the following procedures and requirements for leasing:

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[6]"Section 1. Be it enacted by the General assembly of the State of Louisiana, that the Governor be and is hereby authorized to lease any lands, including lake and river beds and other bottoms, belonging to the State of Louisiana, for the development and production of oil, coal, gas, salt, sulphur, lignite and other minerals, under the terms and conditions hereinafter set forth.

"Section 2. Be it further enacted, etc., That when any person, firm, association or corporation shall desire to lease, as hereinafter provided, any of such lands belonging in this State, he, they or it shall make application to the Governor in writing of his, their or its desire to lease the same, giving the description or character of the land in such application, accompanying the application with a certified check for fifty dollars ($50.00) to be deposited with the Register of the State Land Office as evidence of the good faith of such application, which sum is to be returned to the applicant should he bid for and fail to secure the lease of such land as herein provided.

1. A person interested in obtaining a lease on state lands would make an application to the Governor for the desired property to be submitted for bidding.

2. If favorably acted upon by the Governor, the application would be published in the official journal of the State and in the official journal of the parish where the land was located. The advertisements were required to be published not less than 15 days before the bids were due. A description of the land to be leased, the date and hour the bids would be received and a short summary of the terms and conditions of the lease were required to be contained in the advertisement.

3. The bids were required to be opened in public at the State Capitol by the Governor.

4. The Governor had the discretion to grant the lease to the highest bidder under such terms and conditions as to him seem proper with minimum royalty of 1/8.

During the period of time from the creation of Win or Lose Corporation through the end of the term of office of Mr. Noe as Governor, a total of 43 leases was issued by the State of Louisiana. (Joint Stipulation, III).

"Section 3. Be it further enacted, etc., That upon receipt of application for the lease of land, subject to the provisions of this act, accompanied by the above deposit, the Governor of the State may cause the Register of the State Land Office to make an inspection of the land sought to be leased and after receiving a report from the State Land Office as to the nature and character and surroundings of such land the Governor may cause to be published in the official journal of the State and in the official journal of the parish wherein such land is located and advertisement to be published for a period of not less than fifteen days (15), setting forth therein a description of the land to be leased by the State, the time when bids therefor will be received, a short summary of the terms and conditions of the lease or leases to be executed, and, in his discretion, the royalty to be demanded should he deem it to the interests of the State to call for bids on the basis of a royalty fixed by him; provided, that if such lands be situated in two or more parishes such advertisement shall appear in the official journals of all of the parishes where such lands may partly lie.

"Section 4. That at the date and hour mentioned in the said advertisement for the consideration of bids for any such lease or leases the same shall be opened in public at the State Capitol by the Governor, who is hereby vested with full authority to execute any lease or leases so granted, to the highest bidders therefor, under such terms and conditions as to him seem proper; provided that the minimum royalties to be stipulated in any such lease or leases to be paid to the State shall be one-eighth of all the oil and gas produced and saved from the property leased; seventy-five cents for each long ton of sulphur produced and saved from said property; ten cents per ton for all potash produced and saved from said property; and one-eighth of all other minerals produced and saved from said property; provided that the Governor shall have the right to reject any and all bids; provided further, that any lessee or lessees, or their assigns and transferees, in any leases heretofore granted by the State under the provisions of said Act No. 30 of the Extra Session of 1915, may, at his or their option, in lieu of the royalties provided for in such lease or leases on minerals other than oil, pay to the State the royalties herein provided for."

Mr. Burton submitted bids on 16 leases and was successful in obtaining 14 of them (Exhibit A to Joint Stipulation). Seven of the leases were acquired by operating oil companies and 36 were acquired by independent leasebrokers who usually subleased the leases to operating oil companies. Other independent leasebrokers obtaining state mineral leases during this same period of time were D. J. Simmons, William Helis, S. A. Guidry, J. H. Reeves, Elmo Lee, C. F. Sentz, Dudley J. LeBlanc and F. E. Jones (Joint Stipulation, III).

Thus, while plaintiff's petition alleges a conspiracy to acquire mineral leases, it must be recognized that Mr. Burton was only one of many leasebrokers bidding upon the state leases and at times he was outbid and did not receive the lease. It must also be recognized that of the 14 leases Mr. Burton successfully acquired, only five were subleased by him to The Texas Company (Exhibit A to Joint Stipulation). Mr. Burton also subleased state mineral leases during this same period of time to Atlantic Refining Company, Stanolind Oil and Gas Company, Amerada Petroleum Company, Delta Development Company, Continental Oil Company and Pure Oil Company (Exhibit A to Joint Stipulation). Thus, viewed in light of all the circumstances, no particular significance can be placed on the fact that State Leases 340 and 341 were acquired by Mr. Burton and subleased by him to The Texas Company. These transactions are not evidence of fraud nor of a conspiracy.

In each of the leases involved in this lawsuit, the strict requirements of the statute were followed[7]. The record of this case establishes that the request for advertisement for State Lease 340 was made by Mr. Burton to Governor Allen on January 8, 1936 (Document 71); that State Lease 340 was duly advertised in the Baton Rouge State Times, the Abbeville Meridional, the New Iberia Enterprise, the St. Mary Morgan City Review

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[7]The document marked as "Summary of Relevant Data Concerning State Mineral Leases Bid Upon by Wm. T. Burton for the Period of Time Commencing with the Organization of Win or Lose Corporation Through the End of Term of Office of James A. Noe as Governor," attached as Exhibit A to the Joint Stipulation, contains a summary of the publication information, bidding dates and specifics of each bid.

and the Terrebonne Terrebonne Houma Courier on the dates of January 17, 24 and 31, 1936 (Document 73); that the bids were due on February 4, 1936; and that four bids were submitted for State Lease 340 as follows:

1. Gulf Refining Co.: $61,100 cash bonus, $30,550 annual rental, 5 yr. lease, 1/8 oil and gas, $2/long ton sulphur, 10¢/ton potash, 1/8 all other minerals, $1,250,000 out of 1/24 (Document 77);

2. Shell Petroleum: $55,000 cash bonus, $27,500 annual rental, $1,100,000 out of 1/96, 1/8 oil and gas, $2/long ton sulphur, 10¢/ton potash, 1/8 all other minerals (Document 76);

3. J. Reeves: $60,000 cash bonus, $30,000 annual rental, $2,000,000 out of 1/128 of 7/8, 1/8 oil and gas, $2/long ton sulphur, 10¢/ton potash, 1/8 all other minerals (Document 75); and

4. Burton: $75,000 cash bonus, $37,500 annual rental, $500,000 out of 1/128, 1/8 oil and gas, $2/long ton sulphur, 10¢/ton potash, 1/8 all other minerals (Document 74).

Consistent with the public policy established by Governor Parker in the issuance of State Lease 42, the Burton bid of $75,000 cash bonus was accepted as being higher than the bids of Gulf, Reeves and Shell, which were $61,110, $60,000 and $55,000, respectively. Thus, no other conclusion can be reached other than that State Lease 340 was duly and properly advertised in accordance with law and that the lease was awarded to the person having the highest bid.

The record of this case likewise establishes that the request for advertisement for State Lease 341 was made by Mr. Burton to Governor Allen on January 20, 1936 (Document 80); that State Lease 341 was duly advertised in the Baton Rouge State Times, the Terrebonne Houma Courier and the St. Mary Morgan City Review on January 31, 1936 and February 7 and 14, 1936 (Document 80); that the bids were due on February 18, 1936 (Document 80); and that Mr. Burton was the only person to submit a bid for State Lease 341. Mr. Burton bid a $5,000 cash bonus (Document 80). Again, no other conclusion can be reached other than that State Lease 341 was duly and properly advertised in accordance with law and that the lease was awarded to the person having the highest, and in this case the only, bid.

It should be noted that whereas the request for advertisement for State Leases 340 and 341 were made by Mr. Burton to Governor Allen, Mr.

Noe became Governor during the advertisement period due to the unexpected death of Governor Allen.

Relationship Between Win or Lose Corporation and Wm. T.Burton:

The conveyance by Mr. Burton of undivided interest in various state mineral leases (including overriding royalty interests) to Win or Lose Corporation is not evidence of fraud or a conspiracy. Without the benefit of the testimony of the persons, historical documents reveal a business relationship between Win or Lose Corporation and Mr. Burton. The deposition of Mr. Burton was taken in the income tax case, United States of America v. James A. Noe, Number 20,070, United States District Court, Eastern District of Louisiana. (Document 342A) In the course of the examination, Mr. Burton testified concerning his relationship with Governor Noe and Win or Lose Corporation, as follows:

* * *

"A. I say I became acquainted with him (James A. Noe) when he was Senator, became acquainted with him in Baton Rouge.

Q. Do you recall having any conversation with Mr. Noe; I believe you say he was State Senator at that time, concerning certain dealings with the oil business?

A. Yes.

Q. You remember when that conversation took place?

A. No. I expect around Baton Rouge, but I cannot say.

Q. Well, did you and Mr. Noe reach any agreement of any sort concerning any business transactions?

A. Yes, sir.

Q. Well, what was that agreement?

A. Well, I might have to go into it a little bit. We agreed to a joint venture on acquiring some leases, and possibly developing these leases.

Q. What kind of leases?

A. State leases on water bottoms.

Q. Was it understood as to who was to bid on these leases?

A. Yes, Sir, I was to bid.

Q. In whose name?

A. My name.

Q. Was it understood who was going to put up the filing fees or any fees?

A. Of course, the filing fees did not amount to anything. That was almost nothing. I was to put up the money and the expense in drilling operations, anything to do like that was to be borne 3/4 by him and 1/4 by me.

Q. In what proportion was the ownership of these leases you were to acquire from the State, if you did acquire them, in what proportion was the ownership to be?

A. 1/4 to myself and 3/4 to the Win or Lose Corporation.

* * *.

Q. In this particular instance, you took quite a gamble on Lake Pontchartrain, didn't you?

A. Yes, Sir.

Q. There was a man by the name of Norton who was a Geologist, who first interested you in Lake Pontchartrain?

A. Dr. Norton or Horton. He was Chief Geologist for Superior Oil Company.

Q. And as a result of that information, and interest which the gentleman took in you, you eventually made an agreement with Mr. Noe which later was handled by Win or Lose Corporation, that you would engage in an operation to develop Lake Pontchartrain as a joint venture with Mr. Noe, and later with the Win or Lose Corporation?

A. Yes, Sir.

Q. That was to be in the proportion of 1/4 to you and 3/4 to Win or Lose Corporation. Is that correct?

A. Yes, Sir.

Q. Profit or loss?

A. Yes, Sir.

Q. If you made any money, you got a quarter of it, the Win or Lose Corporation got three-quarters. Whatever money you had to spend, or whatever money you lost, the Win or Lose Corporation was going to have to take care of their 3/4 of the loss, or expenditure, and you take care of your 1/4?

A. Yes." (emphasis added) (Document 342A)

In his testimony during the income tax trials, Mr. Noe also explained that he was the one who involved Mr. Burton in the arrangement with Win or Lose Corporation. His testimony is as follows according to the Baton Rouge Morning Advocate, April 10, 1942 (Document 342):

> "Continuing, Noe said that at that time he had the idea that by developing bottom lands South Louisiana could become a great producing area and 'bring the oil capital from Houston over here,' as I told the Young Men's Business club in a speech at the time. With that idea in mind he said he approached W. T.

Burton, Lake Charles, and arranged to bid in the Lake Pontchartrain lease.

"'We made $37,000 out of that lease. It was a tremendous thing for the state, both in revenue and in employment. I guess the state got $150,000 in rental. But Bill Burton took an awful licking.'

"Burton earlier testified he had spent $2,500,000 in Lake Pontchartrain, and so far has hit only two small producers.

"Noe said that originally he drew checks to cover the $27,000 profit made on this lease after Burton sold it to the Texas Company, and gave the Win or Lose three-quarters of the profit in accordance with their 75-25 partnership arrangement."

Thus, the evidence indicates that the conveyance by Mr. Burton of three-fourths of his interest in the state mineral leases involved was a result of a business agreement in the form of a joint venture whereby Mr. Burton and Win or Lose Corporation would share the profits or losses in the development of the mineral leases in the proportion of one-fourth and three-fourths, respectively.

There is no evidence in the record of this case to establish that the conveyances of the overriding royalties involved in this case by Mr. Burton to Win or Lose Corporation were pursuant to a fraudulent plan or conspiracy. The joint venture arrangement between Mr. Burton and Win or Lose Corporation was a customary manner for those experienced in the oil business to spread the risk and great expense of the development of mineral properties.

Publicity Given to the Issuance of the Leases in the 1936 and 1940 Elections:

The issuance of state mineral leases in which Win or Lose Corporation owned an interest was a highly controversial and extensively publicized political issue. The newspapers of the day nicknamed Governor Allen "Oily Oscar" (Documents 112, 117) and the parties involved were referred to as "pirates" (Document 111).

Cleveland Dear ran for Governor and Philo Coco campaigned for Attorney General in the 1936 election based upon campaign issues involving reform of mineral leasing laws. Full copies of the newspaper articles dealing with the campaign are included within the Joint Stipulation filed in support of this Joint Motion for Summary Judgment. Representative headlines are as follows:

Nov. 22, 1935 - The Shreveport Times, front page headlines, "Noe-Allen Oil and Gas Deals Reviewed" (Document 99)

Nov. 28, 1935 - Morning Advocate, front page headlines, "Charge Allen Profited in Land Lease" (Document 100)

Nov. 28, 1935 - The Times-Picayune, front page headlines, "Governor Allen and Noe Reaped Profit on State Land, Says Dear" (Document 101)

Nov. 29, 1935 - Morning Advocate, front page headlines, "New Oil Deal Charged at Dear Meeting" (Document 102)

Nov. 29, 1935 - The Times-Picayune, front page headlines, "Dear Challenges Governor to Deny He Made Profits on 'Win-Lose' Oil" (Document 103)

Nov. 30, 1935 - The Times-Picayune, front page headlines, "Dear Compares 'Win or Lose Deal to Teapot Lease'" (Document 105)

Dec. 1, 1935 - The Times Picayune, front page headlines, "Allen Challenged by Dear to Explain Oil 'Manipulations'" (Document 106)

Dec. 12, 1935 - The Lake Charles American Press, page 2, "Oil Land Fraud and Smoke Screen Charges Made" (Document 115)

Dec. 12, 1935 - Morning Advocate, front page headlines, "Dear Challenges Allen to Deny He Got Lease Payoff" (Document 117)

Representative quotations from newspaper articles include the following:

The Shreveport Times, Friday November 22, 1935, pages 1, 2

"During the past year this Win or Lose corporation has furnished some marvelous examples of the way property is won and lost. On the very day that the corporation was formed, it acquired an interest in the oil and gas rights in five bayou beds, and many miles of the Ouachita River bed in the parishes of Ouachita, Morehouse and Union, and thereby hangs a story.

* * *

"The net results of all the deals is that James A. Noe and O. K. Allen and their associates, won $320,000 plus whatever sum they received for three-fourths interest in the original lease, which was sold before the lease was ever recorded, and they still hold a one-fourth interest. If the state ever received a dime, the record does not show it. The readers can perhaps figure out who the loser was." (Document 99)

Morning Advocate, Thurdsay, November 28, 1935, pages 1, 5

"Congressman Dear related that Governor Allen leased the bed of the Ouachita River and three other streams to Lieut.-Gov. James A. Noe. On November 20, 1934, Congressman Dear continued, the Win or Lose corporation was formed, with, he said, Lieutenant Governor Noe, Seymour Weiss, president of the dock board, and Earle Christenberry the stockholders.

* * *

"'Who got these checks made payable to "cash"?' The next time Governor Allen comes to New Roads, ask him how much the state lost and he won on the Win or Lose Oil company.

* * *

"Congressman Dear called upon his audience tonight to ask Judge Richard W. Leche, candidate for governor on the state machine's ticket, if he 'approves of the win or lose oil steal." (Document 100)

Morning Advocate, Friday, November 29, 1935, pages 1, 2

"'...All of the above leases and transactions and assignments have been duly acknowledged by Lucille Mae Grace, register of state land office, and by O. K. Allen, governor of the state of Louisiana.'

"Mr. Carville asserted that 'When Philo Coco is elected attorney general he will revoke these oil lease rascalities.'

"'Gov. Oscar Allen cannot deny that the state was "gypped" out of $320,000 by the Win or Lose Oil company in the Ouachita deal,' Congressman Dear declared at White Castle yesterday afternoon and Plaquemine last night.

"Congressman Dear yesterday reiterated the sensational charges he first made at New Roads Wednesday night.

"Asserting that he wanted the people to understand the manipulation of state-owned lands for the benefit of state officials, Congressman Dear explained that the State of Louisiana owns the mineral rights on the bottoms of lakes, rivers and other streams.

"'The state,' Congressman Dear continued, 'can lease these mineral lands, and Governor Allen, representing the state, leased to Lieut. Gov. James A. Noe the bottoms of a part of the Ouachita river and three other streams.'" (Document 102)

Morning Advocate, Saturday, November 30, 1935, pages 1, 5

"'You remember Albert B. Fall, the Teapot Dome oil leases, the little black satchel and the $100,000,' Congressman Dear said. 'Fall was prosecuted and convicted, and he only got $100,000. The Win or Lose Oil company "gypped" the state of Louisiana out of $320,000. It is a greater stench in the nostrils of the people than the Teapot Dome scandal." (Document 104)

The Shreveport Times, Sunday, December 1, 1935, pages 1, 4

"'Gradually the methods by which Louisiana has been bled white by public officers sworn to protect the interests are being revealed as the state campaign progresses,' the statement declared.

"'The past week was notable for two shocking exposes involving no less prominent an official than the governor of the state himself. Stripped of all surplus details, the charge in this

case is that Governor Oscar K. Allen, and Lieutenant Governor James A. Noe and a few associates profited to the extent of $320,000 from manipulation of an oil lease obtained from the state of Louisiana and for which the state did not receive a thin dime.

"'This consciousless deal in which the state was buncoed and the beneficiaries acquired a small fortune was effectuated through a corporation titled "Win or Lose Oil company." No more appropriate title could possibly have been chosen. The state lost and the governor and his associates won. The whole transaction stinks to high heaven; but with grafters and rackateers in control, what immediate regress may the people hope for?

"...This oil grant required the official signature of Governor Oscar K. Allen to effectuate it. The record shows that it was given." (Document 107)

The Times Picayune, Friday, December 6, 1935, pages 1, 7)

"'I do not believe it would be possible for these pirates of the state machine to run for office in any other state in the country.' Congressman Dear declared. 'Yet we see them with brazen audacity, asking for the votes of the people of Louisiana.

"'I cannot imagine Richard Leche, who was Governor Allen's secretary, who accepted appointment to a judgeship from him, and who approves of the acts of the Allen administration, daring to offer himself as a candidate for governor in any other state in the United States.

"'I cannot imagine Allen Ellender, who, as speaker of the state House of Representatives, aided and abetted in the acts of the Allen administration and who has been part and parcel of the state machine having the audacity to run for the United States Senate in any other state.

"'I have called upon Governor Allen to explain to the people of Louisiana his manipulation of state-owned oil lands which resulted in profit to himself, to Lieutenant-Governor James A. Noe and to other members of the state machine.

"'The way Governor Allen has handled leases of state-owned oil lands is a greater scandal than the Teapot Dome scandal. ..." (Document 111)

Morning Advocate, Tuesday, December 10, 1935, pages 1, 6

"'Nobody in this state ever received a check from "Oily Oscar" except his gang of oil-lease boys, and they never will. I will tell you what "Oily Oscar" thinks about the poor people of Louisiana. ..."

"'This is the same Governor Allen who, with his political bed-fellows, "gypped" the state of Louisiana out of more than $1,000,000 on steals of state-owned oil lands." (Document 112)

Philo Coco campaigned for the office of Attorney General on the campaign promise that acquisition of state mineral leases was a fraudulent scheme and that he would secure the return to the State of the oil lands

under lease. Mr. Coco's campaign promises are quoted in the December 20, 1935 edition of The Shreveport Times and The Lake Charles American Press December 17, 1935 edition, as follows:

> "'Vigilant and quick action to secure the return to the state of oil lands now under lease,' was pledged by Philo Coco, candidate for attorney general.
>
> "Mr. Coco said he would 'show no consideration' for those connected with fraudulent schemes to defraud the state, upon his election as attorney general, and that he would faithfully discharge the duties of his office." (The Shreveport Times, Document 122)
>
> "Philo Coco promised 'to prosecute all those involved in the oil deals in the state if there are any legal grounds whatsoever.'" (The Lake Charles American Press, Document 120)

Governor Allen was not silent on these issues during these campaign accusations. He responded to the charges and argued that he had obtained more for the State of Louisiana for the oil leases issued than had previous administrations. An example of Governor Allen's position was quoted in The Shreveport Times December 12, 1935 edition, as follows:

> "Almost at the beginning of his talk Gov. O. K. Allen answered charges which have been hurled at him relative to oil leases in the state and particularly the Win or Lose corporation. He did not refer to any specific leases, although he said that leases on all state lands had been properly advertised . . . .
>
> "'Why they talk about oil leases in this state,' he roared. 'Let me tell you something. This year I've reached down into the ground and taken out in royalties on state lands and in severance taxes more than $5,000,000 for the public schools of Louisiana. I've gotten more out of oil leases than any other Governor.'" (Document 113)

1940 Election:

The campaign issues in the 1940 election were virtually a carbon copy of the 1936 campaign with the exception that the charges of corruption in the issuance of leases were more specific and the promises of reform were more drastic. Sam Jones campaigned for Governor on the specific promise that he would punish "guilty ones." Eugene Stanley campaigned for Attorney General on the specific issue involving the state mineral leases. He categorized the issuance of the leases as "criminal" and pledged "fearless prosecution."

As in the 1936 election year, the newspapers of the day gave full publicity to these campaign issues. On October 6, 1939, the major news-

papers of the state, including The Shreveport Times (Document 144), the New Orleans Times Picayune (Document 143), and the Baton Rouge Morning Advocate (Document 145), ran virtually the identical articles concerning Eugene Stanley's campaign promises. According to the articles, Mr. Stanley promised as follows:

> "'I am not unmindful of the manner in which the power of this office have been abused by occupants in recent years, and pledged myself to perform the duties of the office in a lawful, ethical and honest manner.
>
> "'I am likewise not unmindful of the many violations of the criminal statutes of our state by persons in high position. I now state that I will fearlessly prosecute any and all persons, criminally for such violations, and will proceed civilly against any who have been shown to have defrauded our state in an effort to compel them to make restitution." (Document 143)

On the same day, Sam Houston Jones was reported by The Shreveport Times as campaigning as follows:

> "Jones, a 42-year-old lawyer, told a home town audience in Lake Charles Saturday night he would restore to the taxpayers 'the ill-gotten gains of your political plunderers.'
>
> "'I will root them out and punish those guilty to the last man.' Jones said. 'Their costly mansions would become public museums to serve as an everlasting warning to the wrath to come to those who would waste the state's tax money and natural resources.
>
> * * *
>
> "Jones said he had plans whereby the state from oil leases alone 'ran easily double and can probably triple or even quadruple' the amount of its income.
>
> "'The grossest inefficiency and astounding favoritism has existed in this administration's mishandling of the state oil lands." (Document 144)

The Shreveport Times endorsed the candidacy of Sam Houston Jones for Governor. In stating the reasons for its endorsement, the newspaper specifically answered why it was not supporting James A. Noe. In the front page editorial, The Shreveport Times announced that the extent to which Senator Noe enriched himself through manipulation of state oil and gas leased precluded him from being an acceptable candidate for Governor. The specific quotation from the editorial was as follows:

> "These are chapters of political history which Senator Noe would have the people forget. But the discriminating public has a tenacious memory. And who has ever heard of a leopard changing his spots?
>
> "The extent to which Senator Noe enriched himself through the manipulation of state oil and gas leases, both during his

brief administration as governor and prior to it, is well understood by the people of Louisiana because of the unanswered sensational disclosures of his participation in those deals made by The Shreveport Times. They also recall--very vividly, we think--The Times' exposure of the revealing income tax records of Senator Noe's 'Win or Lose Oil Company,' in which it was shown that only last year the federal government assessed heavy fraud penalties.

"The Shreveport Times has in its files unpublished Land Office records of state oil and gas lease transactions in which Senator Noe appeared as part beneficiary, and which show his company to have acquired millions of acres of valuable oil land in state preserves, without adequate compensation to the state.

"The Times considers that its published relevations of Senator Noe's enrichment through acquirement of state leases, often for nothing, were sufficient to establish culpability on his part. But it has proof of additional deals in state lands in which he was involved--volumes of it! The Times insists that by his own acts Mr. Noe has disqualified himself for the governorship of Louisiana. And the proof of it is in the imperishable record!"

As the heat of the campaign picked up, a full page paid advertisement appearing in the New Orleans Item-Tribune on October 22, 1939 announced with bold, banner type headlines "What About This Lease Record, Mr. Noe?" The full newspaper page was then devoted to financial dealings of Win or Lose Corporation. (Document 148)

Both Sam Jones and Eugene Stanley promised an exhaustive probe into the leasing. According to the Lake Charles American Press on February 23, 1940, Eugene Stanley campaigned as follows:

"Eugene Stanley, attorney-general-nominate, said he was going 'to prosecute every man who deserves to be prosecuted from the highest to the lowest and I am going to make some of these rogues give back some of the millions they have stolen.'" (Document 152)

Likewise, Sam Houston Jones was quoted as stating:

"'An exhaustive probe will be conducted. We figure it will take a long period of time. We'll know more about it when we get in there and get possession of the state records. But we won't overlook anything." (Document 152)

Finally, Eugene Stanley promised as follows:

"Broad powers were lodged in the hands of Huey's controlled attorney general. These laws are still on the books and under them Stanley may go into any action of the state to initiate investigations and prosecutions.

"'We're going back over every federal scandals case, regardless of whether it already has resulted in a conviction,' Stanley said. 'If there was a violation of state law along with the federal offense, we'll prosecute. If there is a civil liability to the state, we'll sue.'" (Document 152)

Organization of the State Mineral Board:

The State Mineral Board did not exist when the mineral leases involved in this lawsuit were issued. The State Mineral Board was organized after the 1936 state elections to promote reform in the administration of state oil lands and to promote a more efficient handling of the leasing procedures.

Governor Leche actually created the State Mineral Board, but it did not become an effective organization until just prior to the administration of Sam Jones in 1940. Governor-elect Leche, in a radio address to the State of Louisiana on May 11, 1936 outlined his proposed legislation. The entire text of the address was carried in the May 12, 1936 New Orleans Time-Picayune. The pertinent excerpt from that text is included within the materials filed in support of the Joint Motion for Summary Judgment as Document 139. Governor Leche proposed the creation of a mineral board and reasoned as follows:

> "... It is my belief that the state should receive a great deal more money from its mineral leases than it has received in the past and I am further convinced that the present system of leasing state lands is not in the best interest of the public. As the laws stands today any person has a right to request the advertisement of any portion of state lands for mineral leasing. Upon the request being made, the land is advertised and it is the function of the governor to receive the bids and to accept such bid as in his judgment, is to the best interest of he stated."
>
> * * *
>
> "At this time I condemn nothing but the system which I am convinced is wrong and which, I believe, in the interest of the people should be remedied. We, therefore, propose and will recommend to the Legislature a state mineral board to be composed of the governor and two members appointed by the governor. ..." (Document 139)

The theme of Governor Leche's address was picked up by the newspapers and favorably reported. In an editorial of May 21, 1936, the Lake Charles American Press recognized the varying elements to be considered in determining the best bid in the case of a mineral lease and recognized that it is a "matter of judgment" (Document 140). The American Press editorial stated that the suggestions of Governor Leche appears "now to offer the best guaranty that the state will secure maximum revenue from state lands." The editorial concluded with the following reasons that discretion in the issuance of the leases was still necessary:

"So, it would seem that some discretion must by virtue of the nature of the industry, be left with the executive. In this situation, only one check appears likely to be effective, and that is full publicity of all details regarding lease transactions. This, added to the precautions suggested by Governor Leche, should give the state maximum protection of its oil lands. However, it is an open question, and doubtless the governor will welcome suggestions." (Document 140)

The State Mineral Board was, in fact, organized by Mr. Leche and was continued by Governor Jones in 1940.[8] Dudley G. Couvillon was the first Secretary of the State Mineral Board. He was employed in late 1937 by Governor Leche and continued after the election of Governor Jones. William A. Romans was employed as Field Supervisor of the State Mineral Board.

Investigation into the Leases:

Consistent with the campaign promises, the first item of business of the State Mineral Board was an in-depth investigation of all mineral leases issued prior to creation of the State Mineral Board.

The deposition of Mr. Couvillon was taken in this case and when asked about implementation of the investigation, he testified as follows:

"Q ... Governor Jones and the Attorney General Eugene Stanley were dedicated to a review of the leases and that they wanted to pursue investigations of the leases insofar as fraud was concerned in the issuance of the leases and insofar as the development of the leases were concerned. That's not a question, but have I stated the political climate that you were working under?

A You've stated it very exactly, in fact, it could be emphasized more, if possible, in the sense of the Jones group emphasizing this phase of their purported planned program if elected.

Q Now after being elected was there a plan implemented?

A Immediately..." (Couvillion dep. 11)

* * *

Q And what leases are included in the investigations?

A The letter (Document 165) lists leases 192, 194, 199, 323, 328, 342, 343, 293, 335, 340, 50, 309, and 356.

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[8]Governor Jones caused the Legislature to pass a Reorganization Act which changed the State Mineral Board to the Board of Minerals. However, following the Supreme Court's ruling on a constitutional issue, the State Mineral Board was reinstated.

Q Are these your handwritten notations on this Letter?

A They are.

Q Do you know when those notations would have been made?

A I'm assuming promptly upon receipt of the letter from Mr. Gensler. (Couvillion dep. 14)

* * *

Q Mr. Couvillon, I would like to show you what purports to be an original of a memorandum concerning a conference held by you and Mr. Romans on July 23, 1940. I first ask you if you remember this conference?

A Yes, I do.

Q And what was the purpose of the conference?

A To review all information accumulated up to that time pertaining to the leases, or principally those granted prior to the creation of the Mineral Board, with preliminary conclusions as to possible courses of action as to each such lease.

Q Was each lease studied in detail?

A Each lease was discussed in detail and based on information secured in a detailed study by Mr. Romans, principally, but by Mr. Gensler and by myself.

Q Now, I ask you if State Leases 340 and 341 were included in the discussion at that time?

A Yes, they were. (Couvillion dep. 15)

* * *

Q Are you aware of the fact that Mr. Gensler had written the Governor on August 9, 1940, and suggested that the investigation would result in recovery to the State of approximately one hundred million dollars?

A I well remember that letter.

Q Let me show it to you, then. Document No. 169. Is the attitude there that one hundred million dollars is involved, was that the seriousness with which the Mineral Board undertook the investigation?

A Yes.

Q It was a matter of major importance?

A There was just no limit to the emphasis on this investigation by the Mineral Board and the Governor. (Couvillion dep. 16)

* * *

Q Do you know if it was the intention of the Board, or the efforts of the Board to contact the witnesses who may have signed the leases and to have interviewed the persons involved?

A It was the intention of the Board to do whatever was necessary to assert the proper claims or attacks where warranted as to some of these leases, and through its legal staff, the Attorney General's office, contact whatever parties were necessary to verify the existence of a problem that warranted a legal attack.

Q And do I understand that the suspicious circumstances alluded to in the newspaper articles were also the subject of the investigation?

A Very definitely. And, of course, that was the fuel for the airing of the entire matter through the years, politically, and legally, through this investigation by the Mineral Board with these apparently suspicious circumstances surrounding some of these leases.

Q Apparently some members of the Board, and perhaps the Governor, were under the impression that the leases had been fraudently (sic) issued.

A Well, the suspicious circumstances pointed to that very definite feeling on the part of the Mineral Board and the Governor.

Q And those circumstances were the subject of your investigation?

A They were the principal--Were they the subject of it? Yes. And the motive for investigation.

Q And you were trying to determine, were you not, evidence of such fraud to be used in cancellation of the leases?

A Yes. The very direct specific objective was to prove that fraud by sufficient evidence and act on it if possible. There was great emphasis in that effort.

Q Was the Board able to develop evidence of the fraud?

A Well, not by the Board, per se. The Board made an affirmative effort to conduct this, through its legal representative, the Attorney General's office, and attempted, to the extent possible, to give the Attorney General maximum discretion in terms of what type of action might be taken, or what action might be justified, and supported the general idea that whereever justified action should be taken in a ...in a courageous fashion, if you might describe it in that way. They urged action if at all justified." (Emphasis added) (Couvillion dep. 18)

Mr. Romans was also deposed in this case. He testified that as part of the investigation, his job was to develop information concerning the mineral leases issued prior to creation of the State Mineral Board. (Romans Dep. 12) Perhaps the most significant aspect of Mr. Romans' testimony was the identification of his letter written to Major Thompson, an attorney for Wm. T. Burton. The letter, dated October 28, 1943, was obviously of a confidential nature. (Document 312) The letter described a conference held on July 23, 1940 between Mr. Romans, Mr. Couvillon and Mr. Gensler

to discuss the leases issued before the creation of the State Mineral Board and included the following:

> "3. It was a matter of record that certain of the leases that Mr. Burton had taken were later turned with an override which later went, in part, to Win or Lose. However, all the attorneys referred to in (2) were of the opinion that the Governor had wide discretionary powers in the granting of leases, and if he chose to grant them to Mr. Burton as against some other bidder, he had the right.
>
> "4. Both Couvillon and I were careful to tell the Board anything which had to do with state leases. Therefore, I am confident that they (the Board members) were as aware, for instance, in, say, September of 1938, as they were in, say, June of 1943 of any taint about 318 and others of Mr. Burton's leases. As a matter of fact, they were probably more aware, because the matter was younger, and fresher in everyone's minds." (Romans dep. 16)

Mr. Romans' testimony concluded by answering the following questions:

> "Q And it is your opinion that the various members of the Board, and the persons investigating the leases, were fully aware of the so-called suspicious circumstances in 1938 and throughout the period of the investigation?
>
> A Very definitely..." (Romans dep. 18)

The Attorney General's Office worked hand in hand with the State Mineral Board in the investigation. In addition to Mr. Gensler who was delegated primarily to work with the State Mineral Board, Attorney General Stanley also assigned Assistant Attorney Generals C. C. Wood, W. C. Perrault and Edward L. Gladney, Jr. to work on the investigation. These individuals conducted an in-depth examination into the legal aspects of the leases based upon all available records.

The deposition of Mr. Wood was taken in this case. When asked about the in-depth nature of the investigation by the Attorney General's office, Mr. Wood testified that the office did "almost nothing else, if I may say so." (Wood Dep. 4). Mr. Wood identified memorandums prepared by him concerning the following state leases involved in this lawsuit: 309, 334, 335, 318, 323, 341 and 344.[9]

The investigation by the Attorney General's Office lasted in excess of one year. During the course of the investigation, Governor Jones was not

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[9]See Documents 188-194.

only kept informed by the Attorney General and the State Mineral Board of the progress of the investigation, but he gave instructions to both concerning the various aspects of the investigation. (Documents 169, 221, 222, 229, 230, 232)

Members of the Attorney General's Office reported on a regular basis to the State Mineral Board and attended its meetings on a regular basis. The status of the investigation was routinely discussed at the various State Mineral Board meetings during the period of time. (Documents 164, 165, 175, 178, 182, 184, 199, 201, 202, 203, 207, 209, 212, 216, 217, 218)

After this exhaustive investigation, it became apparent to the Attorney General's Office that no evidence of fraud could be located. The absence of evidence of fraud was also discussed at the State Mineral Board meetings and in private correspondence between and among the members of the State Mineral Board. By letter dated October 31, 1941, countersigned by both Mr. Gensler and by Mr. Stanley, the Attorney General's Office reported to the State Mineral Board that sufficient evidence to justify legal proceedings had not been developed. (Document 201) The Attorney General's office reported to the State Mineral Board on many "suspicious circumstances" concerning the issuance of various mineral leases involved. However, the Attorney General's Office concluded as follows:

> "We are not prepared to prove fraud by legally admissible evidence with reference to the above referred to suspicious circumstances." (Document 243, and see Documents 242, 246)

The Attorney General's Office requested that the State Mineral Board supply any facts and evidence which it may have to assist in determining whether "this additional evidence is sufficient to disclose legal evidence which would justify the filing of suits..." (Document 201)

At its May 7, 1942 meeting, the State Mineral Board passed a resolution specifically urging that a conspiracy to fraudulently obtain mineral leases had been entered into and requested that the Governor instruct the Attorney General to further investigate fraud. (Document 203) Accordingly, on May 29, 1942, Governor Jones requested the State Mineral Board (Document 221) and the Attorney General to immediately pursue their investigation into all leases granted prior to creation of the State Mineral Board. The Attorney General responded to the Governor by reminding

him that Mr. Gensler had submitted a thorough report to the State Mineral Board and attached a copy of the report for the Governor. (Document 229)

During this period of time, a series of personal and confidential letters were exchanged between Mr. Couvillon and Major Hardey, Chairman of the State Mineral Board. (Documents 211, 213, 215, 219, 220, 222) In a letter dated January 15, 1943, Major Hardey suggested that a conspiracy to defraud the State was a possible ground for attacking the leases. However, the letter also dealt with the fact that there appeard to be no proof of fraud available. (Document 211)

During his deposition, when asked about the lack of evidence of fraud, Mr. Couvillon testified as follows:

Q Yes. How does the letter deal with the issue of proof, Mr. Couvillon?

A Well, it simply paraphrases the previous advice from the Attorney General's office pointing out that despite even a strong suspicion of fraud, that proof was required and to date there appeared to be no such proof available.

Q Well let's digress just one moment. Let's pull State Lease 340---if you will, Mrs. Merrill---the document reflecting State Lease 340, and that reflecting 341. I think you'll find Document No. 78 and Document No. 81. I'd like to show you what purports to be State Lease No. 340, and I'd like you to note that the lease was signed by James Noe, William T. Burton, as lessee; that it is attested by the Secretary of State, that it has as witnesses A. P. White and Carl Campbell. Now, did you know those various persons?

A Yes.

Q And those persons were alive and available to the Mineral Board and its investigators during the investigation?

A Yes.

Q And despite the fact that these persons were alive and the circumstances were fresh, so to speak, you were unable to develop evidence of fraud in connection with the issuance of this lease?

A Well, that's right. I base that on the conclusion that after thoroughly investigating the matter the Attorney General concluded that there was no evidence of fraud. Presumably the effort was made because the Board had expressly requested that an effort be made to uncover proof of fraud wherever possible, and, in this instance, I don't know first hand that the Attorney General's office talked to Mr. White and Mr. Carl Campbell, but I think probably they did. But nevertheless, the conclusion remained that there was no provable evidence of fraud." (Emphasis added) (Couvillon dep. 21-23)

A series of letters between Mr. Couvillon and Major Hardey followed these conclusions. Major Hardey expressed dissatisfaction with the Attorney General's conclusions. While the Attorney General's Office was dealing with legal issues, the members of the State Mineral Board felt political pressure to pursue the matter even against the advice of the Attorney General's Office. Mr. Couvillon expressed the position of the State Mineral Board as follows:

> Q Had a riff started developing, or was there differences of opinions that you can explain?
>
> A Well, probably not a difference of opinion. Legally the Attorney General had taken a position which the Board didn't necessarily argue with from a purely legal standpoint in terms of a possiblity of bringing a special attack on some of these leases based on fraud, primarily. But the Board felt that any doubt in favor of bringing an action or not bringing an action, in a given instance, should be resolved by action being filed by the State to resolve the matter once and for all, not only for the benefit of the State but for the information to the public after the issue had been aired so thoroughly and emphasized in the preceding gubernatorial campaign. (Emphasis added) (Couvillon dep. 24-25)

As evidence of political pressure was the letter dated May 5, 1943 from Governor Jones to Major Hardey where Governor Jones demanded that action be taken on the leases (despite the Attorney General's opinion that no evidence existed). (Document 221)

Despite the political pressure being brought by Governor Jones, the Attorney General remained steadfast and refused to file groundless suits. Mr. Couvillon summarized the situation as follows:

> A Well, it was just a culmination of the strong desire on the part of the Board to take every possible action that could possibly be justified in attacking some of these leases, particularly where fraud was shown, on the one hand, and on the other hand, the indepth study by the Attorney General, including not only the facts, but the legal conclusions that might be drawn from those facts, in terms of bringing actions, and the Attorney General's conclusion that despite the evident, suspicious, circumstances, that he found no provable evidence of fraud in any instance, as to these leases, and therefore he did not wish to take action on any of these leases, based on fraud...."
>
> (Couvillon dep. 26)

The internal correspondence within the Attorney General's Office likewise establishes that the Attorney General was making as exhaustive and as thorough an investigation as possible in an effort to satisfy the pressures being asserted by the State Mineral Board. By letter dated April

22, 1943, Special Assistant Attorney General E. L. Gladney, Jr. wrote the Attorney General as follows:

> "When Major Hardey was present on April 15, I personally explained to him that Mr. Wood and the writer have been diligently reviewing two voluminous files in connection with all leases in which the State Mineral Board had asserted there was a suspision of fraud. I stated to him at the time that as fast as it would be possible for us to thoroughly examine and review all of the law and evidence at our disposal, we would make individual reports as to each lease. The individual reports on each of the leases not heretofore reported on to the State Mineral Board will be in their hands prior to the next regular meeting which we understand will be held on May 20. I was under the impression that he understood the position that this office was in, in connection with the leases not heretofore reported on to the Board.
>
> "The report contemplated as to each lease, in order to be thorough, must necessarily be detailed as to facts and complete as to law." (Emphasis added) (Document 218)

On two of the leases where the Attorney General's Office received the most pressure to institute suit, State Leases 309 and 318, thorough and exhaustive legal opinions were written. Special Assistant Gladney, with the counter signature of Mr. Stanley, wrote a 17 page letter dated May 18, 1943 exhaustively reviewing State Lease 309. (Document 242) The letter states that a suit for fraud could not be successfully maintained and ends with the following conclusion:

> There is no evidence to indicate fraud in connection with this lease and its amendment. Certainly a suit should not be filed based upon nothing more than "suspicious circumstances." The quality of the evidence sufficient to establish fraud is found in the Civil Code (R. C. C., Art. 1848):
>
> "Fraud, like every other allegation must be proved by him who alleges it, but it may be proved by simple presumptions, or by legal presumptions, as well as by other evidence. The maxim that fraud is not to be presumed, means no more than that it is not to be imputed without legal evidence."
>
> * * *
>
> We are thus brought to the determination:
>
> (1) That no irregularity destroyed the validity of the Act of Lease entered into on October 23, 1934.
>
> * * *
>
> (5) That the record indicates no evidence of fraud.
>
> (Emphasis added)
> (Document 242)

Likewise, by letter dated May 18, 1943, Assistant Attorney General Wood wrote a comprehensive letter on State Lease 318 and reached the conclusion as follows:

"We are not prepared to prove fraud in connection with the letting of this lease." (See Document 243)

The letter further cited that there was no statute prohibiting state officials from owning stock in a corporation which acquired an interest in a state mineral lease, absent fraud or conspiracy (See Document 243).

During his deposition, Mr. Wood repeated his conclusion as follows:

A I can make that statement, pretty generally, in respect to most of the leases that have been mentioned. We felt ---I felt, that it's clear to me that fraud is never presumed. It must be established at least by a preponderance of the evidence, and, as far as I could see, we didn't have any evidence of fraud, at all. I might add, parenthetically, that several discussions with the Mineral Board that ran up against a proposition which they either didn't understand or didn't want to understand, and that was, that you could not demand reasonable development of an oil and gas lease with your left hand and seek to set it aside with your right on the grounds of fraud. Now that is a general statement and I think it applies to most of what we're talking about. (Emphasis added) (Wood dep. 12)

* * *

Q That was the conclusion you reached?

A That was the conclusion that I reached and Judge Gladney concurred with me in all of these determinations, and of course, the Attorney General did too. However, the Attorney General, I must say, left it largely to Judge Gladney and to me, and that is the way we saw it, and that's the way I still see it. (Wood dep. 13)

As could be expected, the newspapers of the day continued to give full publicity to the controversial state mineral leases and to the investigation being undertaken by the State Mineral Board and the Attorney General's Office. The investigation was heralded with great fanfare with large headlines announcing that the State sought to recover $100,000,000.00 in oil rights. Virtually identical articles appeared in The Baton Rouge Morning Advocate, The New Orleans Times Picayune, The Lake Charles American Press and The Shreveport Times on Thursday, August 15, 1940. The articles each appeared on the front page of the respective newspapers and announced that Attorney General Stanley would attempt to recover $100,000,000.00 in mineral rights or money allegedly due the State from the controversial oil transactions. (Documents 170, 171, 172, 173) The articles outlined the "irregularities at the inception" of the granting of the leases. The articles quoted a letter prepared by Philip E. Gensler wherein he outlined his investigation and announced that "each lease issued in recent years is being checked but we are filing no suits which are not

amply justified." The Gensler letter further stated that "five of these (leases) are suggestive for possible serious litigation with reference to the cancellation of said leases due to irregularity at their inception assuming the investigations to be made support our present suspicions." (Document 169)

The Shreveport Times (Document 223) and The Lake Charles American Press (Document 174) each ran large editorials favoring the action being taken by Mr. Stanley. The Shreveport Times editorial included the following:

> "The Shreveport Times feels that there is nothing more important than the planned work of the present administration than a thorough probe and complete expose, to be followed by civil and criminal action, or both, of the state mineral leases through the manipulation of which millions of dollars have literally flown into the pockets of favored politicians." (Document 223)

As the investigation continued without litigation being filed as promised, the newspapers again raised the hue and cry. The Baton Rouge Morning Advocate (May 9, 1943) carried an extensive article outlining the three year old investigation and urging that prompt action be taken by the Attorney General. (Document 226) The article made specific references to State Leases 309, 318, 323, 334, 335 and 340. With respect to State Leases 318, 335 and 340, the articles commented as follows:

> Under three leases, No. 318, 335 and 340, the Mineral Board resolution noted that they went to W. T. Burton, Lake Charles oil operator, who in the case of each of the three leases, according to the resolution, assigned within a few days after receiving them most of his interests in them to the Win or Lose Oil corporation, which was composed of various officials and influential individuals." (Documents 224, 226)

The Shreveport Times, the Baton Rouge Morning Advocate and the New Orleans Times-Picayune each carried articles quoting Governor Jones as demanding prompt action by the Attorney General (May 9, 1943). (Documents 224, 225, 226)

As the disagreement between Attorney General Stanley and the State Mineral Board mounted, the newspapers began to carry virtually daily reports. The correspondence between the State Mineral Board and the Attorney General's Office was quoted in the various newspaper articles. Finally, on May 12, 1943, the New Orleans Times-Picayune, The Lake Charles American Press and The Shreveport Times each carried articles to the effect that the State Mineral Board would hire special counsel to insti-

tute the litigation if Mr. Stanley would not file the suits (Documents 233, 334, 235). The State Mineral Board issued a press release to the effect that Attorney General Stanley had made erroneous public statments when he announced that he had complied with the State Mineral Board's request. According to the newspapers quoted, the State Mineral Board announced to Attorney General Stanley:

> "In the event you do not desire to conform to this request we would appreciate you advising us prior to our next Board meeting which is to be held on May 20, 1943, so that at that meeting we can take whatever steps are necessary for the employment of special counsel." (Document 234)

As the controversy raged, Mr. Noe announced that he would attend the May 20, 1943 State Mineral Board meeting and answer "any and all questions" regarding mineral leases on state-owned lands granted while he was State Governor. (May 16, 1943) (Document 239) Mr. Noe characterized the investigation as "purely political persecution." He was quoted by the Baton Rouge Morning Advocate as follows:

> "I am in Washington, and have telephoned this statement to my secretary to be given to the press:
> "The press gave considerable notoriety to stories with reference to some leases granted by me while I was governor of the state of Louisiana, under date of Sunday, May 9, 1943.
> "I note that the state mineral board is going to meet in Baton Rouge on May 20 to go further into this matter. I will be present at this hearing for the purpose of asking and answering any and all questions with reference to any leases granted while I was governor, or any lease I have ever, at any time, had any connection with.
> "I now call upon Sam Jones and John Ewing to come to this meeting and to subject themselves to question in order that the matter can be aired in its entirety, and the public fully informed.
> "I do not believe that either of them will have the courage to show up, for they do their talking through the newspapers, and their fighting with high-faluting words.
> "If there is anything wrong with any lease, ever granted by the state at any time, suit should have been filed long ago. I dare Sam Jones or John Ewing to file suit on one that I have an interest in. If they will, I will show it is purely political persecution, and that there is nothing wrong with any lease I have ever had anything to do with." (Document 239)

The newspapers quoted the extensive Stanley report to the State Mineral Board on May 20, 1943 that there was no fraud in the oil leases. The New Orleans States quoted Mr. Stanley as follows:

> "After a thorough and painstaking investigation his office had failed to find evidence of fraud in a probe of 16 state mineral leases of state-owned land.

* * *

"Stanley stated that despite a thorough and painstaking investigation and interviews with every living witness available, we were not prepared to prove fraud by legal, admissible evidence with reference to suspicious circumstances." (Document 246)

After its May 21, 1943 meeting, the State Mineral Board requested that Governor Jones assist in securing counsel to prosecute the suits which Stanley had declined to bring. Again, the newspapers of the day carried full articles on the controversy. The Shreveport Times quoted James A. Noe as responding that the mineral lease issue had been "kicked around like a political football." (Document 250, see Documents 251, 255) Governor Noe charged that the probe into the leases had been revived for effect on the 1944 campaign in which he was an announced candidate for Governor.

The New Orleans Times-Picayune of May 23, 1943 quoted Governor Jones as approving the move on the part of the State Mineral Board to engage private counsel to further those investigations. (Document 258)

On May 27, 1943, the State Board of Liquidation met for the purpose of discussing providing the State Mineral Board with necessary funds to further investigate the state oil leases. (Documents 261, 262) The Board voted to grant the State Mineral Board $10,000 to continue its investigation. (Document 266) However, the Board's action itself was controversial. One of the members of the Board felt that employment of counsel would be a "direct slap in the face of the Attorney General." (Document 265)

Demands for Development:

At this point the approach of the State of Louisiana, through the State Mineral Board, the Governor and the Attorney General, was radically revised. Frustrated in the attempt, originating out of partisan politics, to establish fraud in the acquisition of the state mineral leases and/or overriding royalties, the State substituted an approach of seeking to obtain increased development of the leased acreage. Accordingly the State sought to obtain the release of acreage in which the lessees were not pursuing development. This approach was pointed out by the testimony of the Chairman of the Mineral Board, Major B. A. Hardey, in a lawsuit captioned

Justin C. Daspit and J. N. Marcantel v. State Mineral Board, No. 23,833 on the docket of the 19th Judicial District Court, Parish of East Baton Rouge, State of Louïsiana[10], as follows:

> "A The Attorney General made a report to the Board on certain leases, giving his impressions or his ideas of just what the status was pertaining to those leases, and following resolutions of the State Mineral Board, the Attorney General, representing the Board, called upon certain lease owners to do certain things in regard to development or suffer suit for cancellation of those leases.
>
> "Q What action followed that, Major?
>
> "A The action generally was this, that the owners of these leases came into the Mineral Board and held conferences before suffering the filing of suits, with the idea of trying to please the State and the Mineral Board by Instituting a plan which would constitute proper development or turning back some of the leases. The result was generally this, that we worked out compromises with them -- if you could call it a compromise, suit not having yet been filed -- we worked out a plan of compromise whereby we had returned to the State a great proportion of leases not properly developed, and by mutual agreement agreed to let these companies have acreages or tracts surrounding fields already discovered. On these leases by such action we had returned to the State something over two million acres of leases which in the opinion of the Board had not been properly developed. That was the action of the Attorney General's Office." (Emphasis added) (Document 349)

As evidence of this new approach, on June 24, 1943, the State Mineral Board met and passed the following resolution concerning demands for development on State Lease 340:

> "On motion of Mr. Sheppard, seconded by Mr. Smither, the Board unanimously voted to authorize, direct and request the office of the Attorney General to make demands upon The Texas Company, the lessee of State Lease No. 340, for the immediate further development of or the release of the undeveloped portions of said State Lease No. 340 and, in default of compliance with such demand, to proceed to take all such legal action as may be necessary, proper or desirable to enforce full and complete compliance by the said lessee with the terms and provisions of said lease."
>
> (Document 275)

In accordance with the Mineral Board resolution, by letter dated July 22, 1943, the Attorney General's Office made formal demand for development on Wm. T. Burton, as lessee of State Lease 340. (Document 281)

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[10]The lawsuit was filed by Mr. Daspit and Mr. Marcantel for an increase in their fee based upon the successful recovery of lands on behalf of the State of Louisiana.

Subsequently, at the July 26, 1943 Mineral Board meeting, Mr. Blish, an attorney for Mr. Burton's sublessee, The Texas Company, appeared before the Board. The minutes reflect the following:

> "Mr. Blish discussed, briefly, with the Board the letters of default which the Board had issued to The Texas Company, through the Attorney General's office, pertaining to State Leases Nos. 334, 335, 340, 347 and 356. Mr. Blish stated that the demands of the Board were being studied, that The Texas Company would be in a position to submit propositions to the Board for the amicable settlement of said demands in the near future and asked that no legal action be taken pending submission of such proposals. Mr. Blish was informed that as long as The Texas Company was making a bona fide effort to develop a basis for settlement of the differences between the Board and the Texas Company respecting the said leases which would be acceptable to both parties, no legal action would be instituted."

(Document 286)

Lawsuits Involving State Mineral Leases:

After Eugene Stanley declined to institute suit on the leases in question, the State Mineral Board announced that "the best oil and gas lawyers that we can get" would be selected to review the leases (Document 268). The State Mineral Board and Governor Jones employed two special counsel, Justin C. Daspit and J. N. Marcantel, to bring suit on behalf of the State Mineral Board to recover the state mineral leases. Eventually, two suits were filed.

The first suit, captioned State of Louisiana v. William T. Burton, Et Al., Number 22664 on the docket of the 14th Judicial District Court, Parish of Calcasieu, State of Louisiana, was filed on October 5, 1945. (Document 298) The allegations of the suit included that Oscar K. Allen, as a stockholder of Win or Lose Corporation, was given a pecuniary interest in the lease by Mr. Burton and that the terms, conditions and provisions of the lease were unusual, unfavorable, inequitable and unconscionable and that the bid of Mr. Burton should have been refused by Governor Allen. The petiton also alleged as follows:

> "That said lease was procured through conspiracy, favoritism, collusion and fraud and it is therefore illegal, null and void and should be so decreed." (Document 298)

After these recitals, the petition pleaded a conspiracy involving other mineral leases, particularly including State Lease 340. The petition alleged as follows:

* * *

27.

The transaction involving State Lease No. 318 is one of several similar transactions engaged in by the said William T. Burton whereby a system, or a common fraudulent scheme, was perpetrated upon the government of the State of Louisiana, as shown by the events hereinafter set forth.

* * *

34.

The public lands which belong to the State of Louisiana, to which it has title in fee simple, as is the case with respect to the mineral lands here involved, are held in trust for all the people of the State. Under the statutes in force and effect when the said leases were made, the Governor was the agent of the State, and the people had the right to rely upon his fairness, impartiality, integrity, and fidelity in carrying out the mandate of the law. That the highest degree of fairness and honesty is required of public officials in the discharge of a public trust goes without saying, and the same standards apply to those with whom they deal.

* * *

40.

Your petitioner alleges, on information and belief, that James A. Noe, then Governor of the State of Louisiana, on the date of execution of State Lease No. 340, and on the date of the said assignment to the Win or Lose Corporation, was a large stockholder in the said Win or Lose Corporation, and that the said James A. Noe received a pecuniary interest in State Lease No. 340.

* * *

41.

That the entire transaction involving State Lease No. 340 and the assignment by the said William T. Burton of 3/4ths of his 1/24th overriding royalty in the lands comprised in said Lease to the Win or Lose Corporation, in which Corporation the said James A. Noe, then Governor of the State of Louisiana, was a large stockholder, was and is tainted with the favoritism, collusion, and corruption, defeating the proper and lawful function of the government of the State of Louisiana.

Thus, the allegations in this 1943 suit by the State of Louisiana against Wm. T. Burton contained virtually the identical language of plaintiff's petition in the captioned matter.

Special counsel for the State Mineral Board likewise filed suit[11] on

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[11] A record of that suit appears as Document 328 in these proceedings and it was captioned State of Louisiana v. Lucille May Grace, Register of State Land Office Et Als., No. 21,076 on the docket of the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

behalf of the State of Louisiana and the State Mineral Board to recover State Lease 309. Win or Lose Corporation was the principal defendant in that case.

Similarly, Governor Noe and Wm. T. Burton were defendants in the case of State of Louisiana, Ex Rel. C. M. Brenner v. Honorable James A. Noe, Governor, State of Louisiana, Et Al., No. 11,126 on the docket of the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, which involved technicalities of advertisements and opening of bids on State Lease 321. A copy of those proceedings appears as Document 344 in these proceedings.

Finally, the issuance of State Lease 335 to Mr. Burton was at issue in the case of State, Ex Rel. Land Investment Company, Inc. v. Honorable James A. Noe, Governor, State of Louisiana, Wm. T. Burton and The Texas Company, No. 11,112 on the docket of the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. A copy of those proceedings appears as Document 348 in these proceedings.

The various lawsuits mentioned above were each litigated to different levels of conclusion. In no case did the plaintiffs prevail. In each of the cases, the proceedings were either dismissed by the plaintiffs or compromised by the parties. As will be seen below, an overall compromise of the controversy between the State Mineral Board and Win or Lose Corporation, The Texas Company and Mr. Burton resulted in ratification of the leases involved, particularly ratification of State Lease 340.

Ratification of State Mineral Leases by State Mineral Board:

Ratification of State Lease 340:

The controversy over state leases raged from the issuance of the leases until November, 1943 when a compromise was reached. In his deposition, Mr. Couvillon, who was Secretary of the State Mineral Board at that time, identified Document 353 as the compromise instrument wherein Wm. T. Burton, The Texas Company and Independent Oil and Gas Co., Inc. released thousands of acres from the effects of State Lease 340 and wherein the State Mineral Board ratified and affirmed State Lease 340 insofar as the remaining acreage was concerned. The dialogue between

counsel and Mr. Couvillon concerning the compromise agreement is as follows:

"Q And this is the compromise wherein acreages were released and the release was ratified? I want to show you. This is your signature?

A Yes, that's my signature.

Q Does not the instrument in Paragraph No. 15, reach the conclusion that: said State Mineral Lease No. 340 is hereby affirmed, and subject to this agreement shall apply to each of the twelve areas hereinabove described, and then those are the areas that were retained by the lessees?

A This agreement so provides.

Q And this agreement was entered into by the State Mineral Board, The Texas Company, William T. Burton, and Independent Oil and Gas Company, Inc., and apparently filed with the State Land Office on December 22, 1943. Was it your opinion, as the secretary of the Mineral Board, that that concluded the investigation into the suspicious circumstances concerning State Lease 340 and the demands for development, and that as a result of those demands and investigation, the lease was then ratified?

A Yes. That ended the matter, so far as I know. No further action was taken that I'm aware of.

MR. GRAY: In connection with the testimony of the witness I would like the document identified as Couvillon Deposition Exhibit No. 353." (Couvillon dep. 35-36)

The controversy over State Lease 340 was summarized during Mr. Couvillon's deposition as follows:

"Q And no law suit was filed on 340, and the matter was compromised after a thorough investigation?

A Yes, exactly."

(Couvillon dep. 34)

Thus, the conclusion is inescapable: based upon a thorough and exhaustive investigation of all the facts, the State Mineral Board ratified State Lease 340.

Ratification of State Lease 341:

No ratification of State Lease 341 appears in the records of the State Mineral Board. When Mr. Couvillon was asked why such document did not appear, he responded as follows:

"Q Now, Mr. Couvillon, the law suit that we're dealing with also concerned State Lease 341, and I've noticed that there was no ratification of State Lease 341, and I've also noticed there were no demands for development on State Lease 341. Do you recall why that would have been the case?

A Well only generally that in the various discussions and reviews and correspondence that there was no indication of any suspicious circumstances or other irregularities as to Lease 341.

Q And your investigation at that time indicated there was no basis for pursuing State Lease 341?

A Yes."

(Couvillon dep. 36)

Mr. Romans was also asked his opinion concerning State Lease 341. He testified as follows:

"Q It was your opinion, initially, that State Lease 341 had no problem?

A As far as I was concerned, no. I was not qualified to do this thing legally. I was only looking at it from a production standpoint.

Q And it was from a production standpoint you were satisfied it was okay?

A I was satisfied, yes, sir."

(Romans dep. 8)

Subsequent to the settlement of the matter and ratification of the leases, The Texas Company and its successor, Texaco, Inc., have made an investment expense in excess of $772,697,252.00 in the development of State Leases 340 and 341 and the State of Louisiana has accepted from The Texas Company and its successor, Texaco, Inc., in excess of $50,000,000.00 as royalties from production under State Leases 340 and 341. (Joint Stipulation, II) The acreage released to the State of Louisiana pursuant to the settlement agreements by Mr. Burton, Win or Lose Corporation (Independent Oil and Gas Company, Inc.) and The Texas Company under State Lease 340 has been subsequently leased by the State of Louisiana to others and the State had received as of 1956 not less than $17,570,655.20 in the form of bonuses, rentals and royalties for such subsequently issued leases. (Document 355)

The State of Louisiana certified to the Secretary of the Interior of the United States, in accordance with the Outer Continental Shelf Lands Act, that State 340, "as amended by instrument dated November 18, 1943" (the settlement agreement), was in full force and effect. (Document 354)

The State Mineral Board has approved more than 200 conveyances, assignments, mortgages, production payments, division orders, etc. con-

cerning interests in State Lease 340 since ratification of the leases in 1943. (Exhibit C to Joint Stipulation)

ARGUMENT NUMBER ONE

THE STATE MINERAL LEASES INVOLVED IN THIS CASE WERE ISSUED IN ACCORDANCE WITH THE LAW IN EFFECT AT THE TIME AND NEITHER FRAUD NOR CONSPIRACY WAS INVOLVED.

The State of Louisiana owns the waterbottoms described by State Leases 340 and 341.[12] The power to lease these properties "is the exclusive province of the Legislature." La. Const., Art. 4 § 2 (1921).[13] By Act 315 of 1926 the Legislature named the Governor as "its mandatary to lease the lands belonging to the State" and established the procedure for him to follow in the issuance of state mineral leases.[14] Simply stated, the procedure was as follows:

1. A person interested in obtaining a lease on state lands would make an application to the Governor for the desired property to be submitted for bidding.

2. If favorably acted upon by the Governor, the application would be published in the official journal of the State and in the official journal of the parish where the land was located. The advertisements were required to be published not less than 15 days before the bids were due. A description of the land to be leased, the date and hour the bids would be received and a short summary of the terms and conditions of the lease were required to be contained in the advertisement.

3. The bids were required to be opened in public at the State Capitol by the Governor.

4. The Governor had the discretion to grant the lease to the

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[12]Louisiana Civil Code Article 450:

"Public things are owned by the state or its political subdivisions in their capacity as public persons.

"Public things that belong to the state are such as running waters, the waters and bottoms of natural navigable water bodies, the territorial sea, and the seashore.

"Public things that may belong to political subdivisions of the state are such as streets and public squares. (Revised by Acts 1978, No. 728, § 1, eff. Jan. 1, 1979.)"

[13]La. Const. Art. 9 § 1 (1974)

[14]The appropriate statutes are quoted in this memorandum beginning at page 14.

highest bidder under such terms and conditions as to him seem proper with minimum royalty of 1/8.

In State, Ex Rel Brenner v. Noe, 186 La. 102, 171 So. 708 (1936), the Supreme Court interpreted Act 315 of 1936 as follows:

> "The power to lease lands, including lake and river beds and other bottoms, belonging to the state of Louisiana, is the exclusive province of the Legislature (Constitution of 1921, art. 4, § 2). By its Act No. 30 of the Extra Session of 1915, as amended by Act No. 315 of 1926, the Legislature made the Governor its mandatary to lease the lands belonging to the state under the terms and conditions prescribed in the statute. The Governor, in carrying out the mandate of the Legislature, has no more authority than that which is specially delegated to him therein. While the Governor is given discretion as to whether or not he will ask for bids for the leasing of the lands, yet he has no power or authority to lease without advertising the property as is expressly required by the act, which must contain a description of the land to be leased; the time when the bids therefor will be received; and a short summary of the terms and conditions of the lease to be executed. Furthermore, the Governor has been given no discretion as to when and where the bids shall be opened. We are of the opinion that the actions of the Governor in granting leases of lands belonging to the state are subject to review by the courts and whenever his acts are found to be in violation of the provisions of the act authorizing him to execute such leases, they will be set aside." (171 So. 712)

Similarly, in State, Ex Rel Porterie v. Grace, 184 La. 443, 166 So. 133 (1936), the Louisiana Supreme Court, in interpreting Act 315 of 1926, made it perfectly clear that the Governor has discretion in the issuance of leases, and, provided that if the procedure of the statute is followed, the court will not substitute its judgment for that of the Governor:

> "It is conceded in the brief for the Governor and the register of the state land office that the only authority that is conferred upon them by this statute is the authority to determine primarily the meaning of the terms and conditions of the mineral leases granted by the state, to the end of determining whether the terms and conditions of such contracts are complied with; hence it is conceded by these officials that the statute does not purport or attempt to deprive the courts of jurisdiction over questions or controversies that have been decided by the Governor and the register of the state land office under authority of this statute. The only limitation of authority in that respect is that the courts will not place their judgment above that of the executive or administrative officers who are designated by statute as the agents of the state in the determination of matters peculiarly within the knowledge of such officers, and as to which the necessary discretion is confided in them specifically by the statute which makes them the agents of the state. That does not mean that the officers so designated are invested with "judicial power" in the sense in which that power is exercised by the courts. Conery v. New Orleans Waterworks Co., 41 La.Ann. 910, 7 So. 8; Holmes v. Tennessee Coal, Iron & Railroad Co., 49 La.Ann. 1465, 22 So. 403; Edison Electric Co. v. City of New Orleans, 130 La. 693, 58 So. 512; State v. Guidry, 142 La. 422, 76 So. 843. In the latter case it was said that the right of the Legislature to delegate to an administrative board or agency the authority to determine the facts upon which the law is to be applied was beyond dispute." (Emphasis added) (166 So. 137)

In the case of State Leases 340 and 341, the procedure required by Act of 1926 was precisely followed. The record of this case establishes that the request for advertisement for State Lease 340 was made by Mr. Burton to Governor Allen on January 8, 1936 (Document 71); that State Lease 340 was duly advertised in the Baton Rouge State Times, the Abbeville Meridional, the New Iberia Enterprise, the St. Mary Morgan City Review and the Terrebonne Houma Courier on the dates of January 17, 24 and 31, 1936 (Document 73); that the bids were due on February 4, 1936; and that four bids were submitted for State Lease 340 as follows:

1. Gulf Refining Co.: $61,100 cash bonus, $30,500 annual rental, 5 yr. lease, 1/8 oil and gas, $2/long ton sulphur, 10¢/ton potash, 1/8 all other minerals, $1,250,000 out of 1/24 (Document 77);

2. Shell Petroleum: $55,000 cash bonus, $27,500 annual rental, $1,100,000 out of 1/96, 1/8 oil and gas, $2/long ton sulphur, 10¢/ton potash, 1/8 all other minerals (Document 76);

3. J. Reeves: $60,000 cash bonus, $30,000 annual rental, $2,000,000 out of 1/128 of 7/8, 1/8 oil and gas, $2/long ton sulphur, 10¢/ton potash, 1/8 all other minerals (Document 75); and

4. Burton: $75,000 cash bonus, $37,500 annual rental, $500,000 out of 1/128, 1/8 oil and gas, $2/long ton sulphur, 10¢/ton potash, 1/8 all other minerals (Document 74).

Consistent with the public policy established by Governor Parker in the issuance of State Lease 42,[15] the Burton bid of $75,000 cash bonus was accepted as being higher than the bids of Gulf, Reeves and Shell, which were $61,110, $60,000 and $55,000, respectively.

The record of this case likewise establishes that the request for advertisement for State Lease 341 was made by Mr. Burton to Governor Allen on January 20, 1936 (Document 80); that State Lease 341 was duly advertised in the Baton Rouge State Times, the Terrebonne Houma Courier and the St. Mary Morgan City Review on January 31, 1936 and February 7 and 14, 1936 (Document 80); that the bids were due on February 18, 1936 (Document 80); and that Mr. Burton was the only person to submit a bid for State Lease 341. Mr. Burton bid a $5,000 cash bonus (Document 80).

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[15] See page 10 of this memorandum for the public policy established by Governor Parker.

Therefore, the record of this case conclusively establishes that the procedure of Act 315 of 1926 was strictly followed in the issuance of State Leases 340 and 341. Consistent with State Ex Rel Brenner v. Noe, supra and State Ex Rel Porterie v. Grace, supra, it is respectfully submitted that the Governor had absolute discretion to issue both State Leases 340 and 341 and such discretion is not subject to judicial review by this Honorable Court.

Plaintiff's petition alleges the existence of a conspiracy entered into by and between Huey P. Long, Oscar K. Allen, James A. Noe, Seymour Weiss, Alice Lee Grosjean and Earle Christenberry to fraudulently acquire state mineral leases.

Huey P. Long died on September 10, 1935 and Oscar K. Allen died on January 28, 1936, both deaths occurred prior to the issuance of either State Lease 340 or 341. It is ludicrous to contend that either Huey P. Long or Oscar K. Allen could have participated in the alleged fraudulent issuance of two state mineral leases subsequent to their deaths. Likewise, active participation in the affairs of the state government by Alice Lee Grosjean and Earle Christenberry effectively ceased with the death of Huey P. Long in the year preceding issuance of State Leases 340 and 341. Both Alice Lee Grosjean and Earle Christenberry have given sworn affidavits in this case denying participation in any conspiracy involving the issuance of state mineral leases.

As previously stated, counsel for defendants exhaustively searched the records of the State Mineral Board, Office of the Attorney General and the Louisiana State Land Office for relevant documents. Additionally, the archives for the major newspapers of the state were thoroughly searched. Every living witness has been interviewed and either their deposition taken or an affidavit submitted on their behalf. This investigation failed to reveal evidence of fraud or conspiracy or that the leases were not issued in accordance with the law in effect at the time.

After the creation of the State Mineral Board, and particularly following the election of Governor Jones and Attorney General Eugene Stanley, an in-depth investigation of all state mineral leases issued prior to the creation of the State Mineral Board was begun. This memorandum

contains a detailed analysis of the investigation commencing at page 28 hereof.

A dominant aspect of the investigation was an effort to discover evidence of fraud involved in the issuance of state mineral leases granted to Wm. T. Burton and in which Win or Lose Corporation owned an interest. As established in detail in other sections of this memorandum, despite several years of investigation, neither the State Mineral Board nor the Office of the Attorney General was able to uncover evidence of fraud. Specifically concerning State Leases 340 and 341, the record of this case establishes that the leases were let in accordance with law and no evidence of fraud.

By instrument dated July 15, 1941 (Document 182), Assistant Attorney General W. C. Perrault reported to Attorney General Stanley on the absence of fraud involved in the issuance of Leases 340 and 341 as follows:

> "Despite the suspicious circumstances surrounding the execution of these leases, as above pointed out, I am not prepared to say that fraud entered into these transactions. Investigation thus far made has unearthed none, and no further evidence can be secured except from those who may have participated in the fraud, if any fraud existed. I think, therefore, that these leases cannot successfully be attacked for fraud because of lack of proof. Mere suspicion or probability of its existence are insufficient under the law. See 9 La. Dig., Section 50, Page 95, citing numerous cases." (Emphasis added) (Document 248)

Likewise, the minutes of the meeting of the State Mineral Board dated May 20, 1943 (Document 248) include a report by the Attorney General's office concerning the absence of fraud in connection with State Lease 340 as follows:

> "As in other cases, the Attorney General states that he had been unable to uncover actual proof of fraud in connection with this lease and that despite the above mentioned suspicious circumstances, he did not recommend a suit in connection with this lease on the basis of fraud." (Document 248)

Additionally, Mr. Couvillon testified as follows concerning the absence of fraud in the issuance of State Leases 340 and 341:

> "Q Well let's digress just one moment. Let's pull State Lease 340 --- if you will, Mrs. Merrill --- the document reflecting State Lease 340, and that reflecting 341. I think you'll find Document No. 78 and Document No. 81. I'd like to show you what purports to be State Lease No. 340, and I'd like you to note that the lease was signed by James Noe, William T. Burton as lessee; that it is attested by the Secretary of State; that it has as witnesses A. P. White and Carl Campbell. Now, did you know those various persons?

"A Yes.

"Q And those persons were alive and available to the Mineral Board and its investigators during the investigation?

"A Yes.

"Q And despite the fact that these persons were alive and the circumstances were fresh, so to speak, you were unable to develop evidence of fraud in connection with the issuance of this lease?

"A Well, that's right. I base that on the conclusion that after thoroughly investigating the matter the Attorney General concluded that there was no evidence of fraud. Presumably the effort was made because the Board had expressly requested that an effort be made to uncover proof of fraud wherever possible, and, in this instance, I don't know first hand that the Attorney General's office talked to Mr. White and Mr. Carl Campbell, but I think probably they did. But nevertheless, the conclusion remained that there was no probable evidence of fraud." (Emphasis added) (Couvillon dep. 21-22)

Mr. Wood, who participated in the investigation by the Attorney General's Office, likewise testified that the conclusion was reached and "concurred" in that there was no evidence of fraud involved:

"Q *** Now, I'd like to ask if you recall having written a letter reaching the conclusion that the State leases should not be pursued on the basis of fraud because you had obtained no evidence of such fraud?

"A I can make that statement, pretty generally, in respect to most of the leases that have been mentioned. We felt --- I felt, that it's clear to me that fraud is never presumed. It must be established at least by a preponderance of the evidence, and, as far as I could see, we didn't have any evidence of fraud, at all.

* * *

That was the conclusion that I reached and Judge Gladney concurred with me in all of these determinations, and, of course, the Attorney General did too. However, the Attorney General, I must say, left it largely to Judge Gladney and to me, and that is the way we saw it, and that's the way I still see it." (Emphasis added) (Wood dep. 12-13)

It is respectfully submitted that the record of this case clearly reflects that no evidence of fraud exists and that State Leases 340 and 341 were issued in accordance with the law in effect at that time.

ARGUMENT NUMBER TWO

DURING THE RELEVANT PERIOD OF TIME, THERE WAS NO PROHIBITION AGAINST DEFENDANTS OR THEIR RESPECTIVE ANCESTORS IN TITLE ACQUIRING AN INTEREST IN STATE MINERAL LEASES.

Plaintiff's original petition alleges a conspiracy by and between Oscar

K. Allen, Huey P. Long, Alice Lee Grosjean, James A. Noe, Seymour Weiss and Earle Christenberry wherein those persons used the position of public office held by them to acquire the mineral leases involved. The record of this case establishes that State Lease 340 was issued on February 7, 1936 and that State Lease 341 was issued on Feburary 18, 1936. Huey P. Long died on September 10, 1935 and Oscar K. Allen died on January 28, 1936. At the time State Leases 340 and 341 were issued, no public office was held by Alice Lee Grosjean, Earle Christenberry or Seymour Weiss. James A. Noe was Governor in February, 1936 when the leases were issued; however, he had succeeded to that position by fortuitous circumstances resulting from the appointment of Lieutenant Governor Fournet to the Louisiana Supreme Court and from the death of Oscar K. Allen.

Since Huey P. Long, Oscar K. Allen, Alice Lee Grosjean, Earle Christenberry and Seymour Weiss had no public office at the time State Leases 340 and 341 were issued, there was clearly no prohibition against those persons, and particularly their heirs, from acquiring interest in state mineral leases. It is respectfully submitted that there was also no prohibition against James A. Noe acquiring an interest in a state mineral lease.

This precise point was included in the investigation by Attorney General Stanley. By letter dated May 18, 1942 (Document 242), Special Assistant Edward L. Gladney, Jr. expressed the opinion that the acquisition of interests in state mineral leases by Governor Noe and Oscar K. Allen was not prohibited:

> "At no time during any of the foregoing transactions was there a prohibitory statute that rendered Noe (State Senator from May 9, 1932 to February 26, 1935, and Lieutenant Governor from February 26, 1935 to January 28, 1936, and Governor from January 28, 1936 to May 12, 1936) ineligible to bid on and secure a lease on State mineral lands. Nor was Governor Allen, a shareholder in the Win or Lose Corporation, enjoined by statute from owning stock in a corporation securing oil or gas rights under a State lease granted to another by him." (Document 242)

The only statute concerning state officials or employees owning mineral interests in effect during the relevant period of time was Act 127 of 1912 § 7 which provided as follows:

> "*** Be it further enacted, etc., That the Conservation Commission shall permit no salaried officer or employee to be

actively interested in the exploiting for personal gain of any of the natural resources of the State, or to be employed by any person, firm or corporation engaged in the exploiting of any of the natural resources of the State, under the penalty of dismissal from the service hereof and forfeiture of any rights sought to be acquired by said officer or employees."

The case of State v. Maestri, 199 La. 149, 5 So.2d 499 (1941), involved an interpretation of this statute. The Supreme Court ruled that Robert L. Maestri, former Conservation Commissioner, did not violate the statute by acquiring an interest in a corporation which owned mineral properties because he was not "a salaried officer or employee" of the Commission. The Supreme Court specifically ruled that there was nothing in the statute which required the "Commissioner" to subject himself to penalties in circumstances which would have been prohibited had he been an "employee". Specifically, the Supreme Court ruled as follows:

"If it had been the intention of the Legislature to make the Commissioner subject to the offenses and penalties prescribed by Section 7 of Act 127 of 1912, as strenuously argued by counsel for plaintiffs, it would have been a simple matter for the Legislature to have expressed that intention by phrasing Section 7 to read as follows:

'That neither the Commission, nor any of its members, nor any salaried officer or employee of the Commission shall be, or shall become actively interested in exploiting, for personal gain, any of the natural resources of the State, under penalty of removal from office or dismissal from the service and forfeiture of any right sought to be acquired by such Commissioner, salaried officer or employee.'

"From our reading of Section 7 of Act 127 of 1912 and its related provisions, the amendatory acts, No. 66 of 1916 and No. 105 of 1918, and the pertinent provisions of the Constitution of 1921, it is clear to us that it was not the intention of the Legislature to place the members of the Conservation Commission or their successor, the Conservation Commissioner, within the provisions of the section." (Emphasis added) (5 So.2d 503-504)

Likewise, had it been the intention of the Legislature to prohibit the Governor from acquiring an interest in state mineral leases, it would have been a simple matter for the Legislature to have enacted such a statute. No statute was enacted.

It must be pointed out that State Leases 340 and 341 were not acquired by a public official, but rather were acquired by Wm. T. Burton. As set forth in other parts of this memorandum, a joint venture arrangement existed between Mr. Burton and Win or Lose Corporation concerning the financing of the development of the mineral transactions entered into by Mr. Burton. Since there was no prohibition against Governor Noe acquir-

ing an interest in state mineral leases himself, surely there was no prohibition against Governor Noe owning stock in a corporation which merely owned an interest in mineral transactions actively developed by one who was not a public official.[16]

ARGUMENT NUMBER THREE

THE RELEASE AND COMPROMISE AGREEMENTS BETWEEN THE STATE MINERAL BOARD, THE TEXAS COMPANY, MR. BURTON, AND WIN OR LOSE CORPORATION (INDEPENDENT OIL AND GAS COMPANY, INC.) IN 1943 BAR PROSECUTION OF THIS SUIT BY PLAINTIFF AS REPRESENTATIVE OF THE STATE OF LOUISIANA.

Prior to the creation of the State Mineral Board, the Legislature designated the Governor as its mandatary to lease state lands.[17] By Act 93 of 1936, the Legislature changed its mandatary. It created (Section 1) the State Mineral Board as a "body corporate" with "powers incident to corporations, and may sue and be sued." It (Section 2) expressly conferred on the Board power and authority to "lease lake and river beds and other bottoms" for mineral development, and in Sections 9 and 12, it was expressly declared:

> "Section 9. The Board shall have full supervision of all mineral leases granted by the State, now in effect or hereafter entered into, in order that it may determine that the terms of any such lease are fully complied with, and generally shall have authority to take any lawful action for the protection of the interests of the State. It shall have authority to institute any action to annul any such lease upon any legal ground whatsoever."

Section 9 of Act 93 of 1936 was amended in 1940 by Act 71 of 1940. This amendment did not change the above provisions but added additional provisions empowering the Board to amend leases. Subsequently, Act 53 of 1942 empowered the Board to enter into any agreement or amendment of any existing mineral leases, such as State Lease 340. Section 1 of Act 153 of 1942 expressly stated that "the Board shall have full supervision over

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[16] In 1964, almost 30 years after acquisition of the state mineral leases involved in this lawsuit, the Louisiana Legislature passed Act 110 of 1964 establishing a Code of Governmental Ethics for elected officials and state employees. It is questionable whether Act 110 of 1964, as amended by subsequent legislation, would prohibit the conduct of Governor Noe in this case; but it is clear that no such prohibition existed prior to 1964.

[17] See page 46 of this memorandum.

all mineral leases granted by the State, now in effect" and that "the Board shall have further power and authority to enter into any agreement or amendment of any lease or leases now in effect."

This plain language conferred on the State Mineral Board supervisory power over all existing state leases and granted it the right to enter into any agreement respecting such leases. It was only natural for the Legislature to confer the power to amend or ratify such leases upon the agency which was charged with the general supervision of and responsibility for mineral leases. The State Mineral Board's broad authority to act for the State in all matters incident to the leasing of State-owned lands for mineral development, and to exercise all the power respecting these matters that could be exercised by the Legislature itself, has been recognized by the Supreme Court of Louisiana in Begnaud v. Grubb & Hawkins, 209 La. 826, 25 So.2d 606 (1946).

Therefore, the State Mineral Board was vested both statutorily and jurisprudentially with supervision of all state mineral leases with full power to amend, ratify and confirm such leases as its discretion dictated.

Transactions or compromises are governed by the Louisiana Civil Code, Articles 3071, et seq. Three pertinent articles are the following:

"Art. 3073. Scope of transaction

> "Art. 3073. Transactions regulate only the differences which appear clearly to comprehend in them by the intention of the parties, whether it be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties never intended to include in them.
>
> "The renunciation, which is made therein to all rights, claims and pretensions, extends only to what relates to the differences on which the transaction arises."

* * *

"Art. 3078. Res judicata; error; lesion

> "Art. 3078. Transactions have, between the interested parties, a force equal to the authority of things adjudged. They cannot be attacked on account of any error in law or any lesion. But an error in calculation may always be corrected."

* * *

"Art. 3071. Transaction or compromise, definition

> "Art. 3071. A transaction or compromise is an agreement between two or more persons, who, for preventing or

> putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.
>
> "This contract must be reduced into writing."

The settlement of the controversy involving the state mineral leases issued to Mr. Burton is a classic application of the above quoted Civil Code articles. As has been pointed out in this memorandum, a controversy existed, between the State of Louisiana represented by the State Mineral Board, the Governor and the Attorney General's Office on one side and Wm. T. Burton, Mr. Noe, Win or Lose Corporation and The Texas Company on the other side, concerning the validity of the state mineral leases issued to Mr. Burton and in which Win or Lose Corporation had an interest. All aspects of these leases were thoroughly investigated by both the Attorney General's Office and the Mineral Board. The Mineral Board passed resolutions instructing the Attorney General's Office to pursue release of the leases on the grounds that they were illegally or fraudulently let and on the grounds of improper development.

Acquisition of the overriding royalties by Win or Lose Corporation and its relationship to public officials were exhaustively investigated. The state officials, particularly including the Attorney General's Office, the Mineral Board and Governor, were specifically aware of the ownership of the overriding royalties by Win or Lose Corporation and were particularly aware of the stock ownership of Win or Lose Corporation. (See Documents 311, 312 and Romans dep. 14-18)

Lawsuits were filed by the State against both Win or Lose Corporation and Mr. Burton. (Documents 328 and 298) The lawsuits involved virtually identical issues as presented by plaintiff in the instant case. The earlier pleadings specifically referred to acquisition of State Lease 340 through "favoritism, collusion and corruption." The lawsuits were aggressively and tenaciously defended by Mr. Burton and Mr. Noe and the issues of fraudulent acquisition of the mineral leases were vehemently denied by Mr. Noe during Mineral Board meetings. (See Documents 303, 306, 309, 310 and 313)

As previously pointed out in this memorandum, frustrated in the

attempt to establish fraud in the acquisition of the state mineral leases and/or overriding royalties, the State Mineral Board and the Attorney General substituted a new approach, instead of pursuing the validity of the leases, they sought to obtain increased development of the acreage under these leases. Concomitantly, the State sought to obtain the release of acreage under the leases where the lessees were not pursuing development.

At the State's request, thousands of acres of land, as previously covered by various state mineral leases, were voluntarily released by Mr. Burton, The Texas Company and the Win or Lose Corporation. The leases, covering all of the remaining acreage, were ratified by the State Mineral Board. (Documents 276, 197A and 331-334)

In the case of State Lease 340, paragraph 15 of the November 18, 1943 settlement document specifically states that State Lease 340 is "hereby affirmed and subject to this agreement shall apply to each of the 12 areas hereinabove described." (Document 353) Each of the retained and defined "domes" was either then producing or, as respects a nonproducing dome, the lessee agreed to drill within six months or release that particular "domes" acreage back to the State.

In accordance with the settlement of the overall controversy of the parties, litigation where the State sought rescission of State Lease 318, was dismissed with prejudice in the Supreme Court, following execution of a compromise agreement virtually identical to the November 18, 1943 agreement covering State Lease 340, as mentioned above. (Document 350) In the Joint Motion for Dismissal of Appeal, as presented to the Louisiana Supreme Court on September 27, 1944, the following stipulation was expressly made and filed:

> "that the State Mineral Board has formally recognized the validity of said lease (318) and all of the differences existing between the plaintiffs-appellants and the defendant-appellee concerning said lease have been compromised and adjusted and the subject matter of said litigation has, consequently, become moot." (Emphasis added) (Document 298)

The joint motion was signed by the Attorney General of Louisiana, the Executive Council to the Governor of Louisiana, along with both Justin C. Daspit and J. N. Marcantel, as the Assistants to the Executive Council to

the Governor of Louisiana and also as Special Counsel for the State Mineral Board.

Had there been litigation between the State of Louisiana and the parties hereto on November 18, 1943 concerning State Lease 340, such litigation would have become "moot" upon execution of the settlement document (Document 353) just as the litigation concerning State Lease 318 became "moot" upon execution of the identical settlement document (Document 350) concerning that lease.

It is thus respectfully submitted that the November 18, 1943 settlement agreement bars prosecution of this cause by plaintiff herein. Plaintiff's lawsuit seeks a return to the State of Louisiana of overriding royalty interests allegedly acquired by public officials. This precise issue was specifically included in the compromise instruments, for the State Mineral Board had specifically instructed the Attorney General to seek the return of similar overriding royalty interests. At its meeting on February 11, 1943, the State Mineral Board passed a resolution containing the following provision:

* * *

"WHEREAS, according to said official records, certain high ranking State officials and their friends realized personal benefits in the form of huge cash profits and overriding royalties with respect to certain of such leases and that in the opinion of this Board, this resulted either from mal-administrations, or conspiracy to defraud the State, or both, and

"WHEREAS, many of such leases have not been fully or properly developed in accordance with the requirements thereof, and such failure has resulted in loss to the State, and

"WHEREAS, as a result of such action, the State sustained substantial losses which should be recovered from such lessees, officials and/or individuals, if possible, and

"WHEREAS, the Attorney General of the State of Louisiana is, by law, the legal representative of the State Mineral Board,

"NOW THEREFORE, BE IT RESOLVED by the State Mineral Board that the Attorney General be requested to take action immediately to recover for the State of Louisiana all profits or overriding royalties fraudulently or illegally obtained in connection with any mineral lease covering State owned property and to enforce full and complete compliance with the reasonable development and due diligence requirements of such leases, the particular leases and the particular phases of each that the Board desires be given attention being as follows, to-wit:

* * *

"STATE LEASE NO. 340 - This lease, which was awarded

by Governor James A. Noe to Wm. T. Burton, covers approximately 500,000 acres. Only about 1/10th of this area has been developed and, although the present lessee, The Texas Company, has been recently active on this lease, a strong effort should be made to enforce immediate and complete development or release of the undeveloped portions of this lease.

"There was some question that the bid submitted by W. T. Burton, to whom this lease was awarded, was the best one submitted, the bid of the Gulf Refining Company, although offering less cash, seeming to have been desirable because of a much larger oil payment. However, to forestall any attack, an oil payment was arbitrarily inserted in the lease as granted to Burton, even though same was not stipulated in his bid. A few days after receiving this lease, Burton assigned this lease to The Texas Company at a cash profit of $20,000.00 plus an obligation to pay rental to him personally or a 1/24th overriding royalty in the event production was obtained, after which Burton assigned 3/4ths of his interest in the lease to the Win or Lose Corp. This indicates very strongly that this lease was deliberately awarded to Burton at less than its actual value so that it could be subsequently dealt with to the benefit of certain officials and individuals. It seems that demands should be made against those profiting from this lease for recovery of the sums lost by the State." .(Emphasis added) (Document 212)

Similarly, at a special meeting of the State Mineral Board held on May 11, 1943, the State Mineral Board declared as follows:

"This meeting was a special meeting called, principally, to reply to a letter from Governor Jones requesting prompt action by the Board to recover profits and overriding royalties thought to have been fraudulently obtained by certain individuals in connection with the award of State leases prior to the creation of the State Mineral Board, and, also to enforce full and complete development of all State leases and, further, to reply to the Attorney General's public statements to the effect that any delay in such action was caused by the State Mineral Board and not by his office." (Emphasis added) (Document 230)

Also, at another special meeting of the State Mineral Board held on July 3, 1943, the following is included in the minutes:

"This meeting was held primarily for the purpose of discussing the employment of special counsel to take action for the recovery of apparent fraudulent profits and overriding royalties realized by certain State officials and their associates in connection with the award of certain State leases prior to the creation of the State Mineral Board." (Document 272)

Win or Lose Corporation and Mr. Burton, owners of all of the overriding royalty affecting State Mineral Lease 340 on November 18, 1943, as parties to the settlement agreement, surrendered to the State of Louisiana their overriding royalties on hundreds of thousands of acres of property previously included within State Lease 340. In exchange for this release, the State Mineral Board, in accordance with its statutory authority, ratified the remaining lease as well as the sublease to The Texas Company and the overriding royalties owned by both Win or Lose Corporation and Wm.

T. Burton.

In accordance with Louisiana Civil Code Article 3078, this "transaction" or compromise agreement has "a force equal to the authority of things adjudged." The State of Louisiana is therefore barred from prosecution of this suit and, likewise, plaintiff, as representative of the State of Louisiana, is likewise barred from the prosecution of this suit.

It is respectfully submitted that as to the November 18, 1943 compromise agreement, there is no genuine issue of material fact and defendants herein are entitled to a judgment of dismissal as a matter of law.

ARGUMENT NUMBER FOUR

PROSECUTION OF THIS SUIT IS BARRED BY THE WELL RECOGNIZED AND JUDICIALLY ACCEPTED PRINCIPLE AND DOCTRINE OF ESTOPPEL.

The doctrine of estoppel applies to the State as well as to private persons. Gulf Oil Corp. v. State Mineral Board, 291 So.2d 807 (La. App. 4th Cir. 1974), writ granted, 317 So.2d 576 (La. S.Ct. 1974); State v. Register of State Land Office, 193 La. 883, 192 So. 519 (1939); State v. Taylor, 28 La. Ann. 460 (N.O. 1876); State v. Ober, 34 La. Ann. 359 (N.O. 1852); State, through Dept. of Hwys. v. Nat'l Advertising Co., 356 So. 2d 577 (La. App. 3rd Cir. 1978).

The elements of estoppel are (1) representation by conduct or word; (2) justifiable reliance; and (3) a change in position to one's detriment because of the reliance. See State, through Dept. of Hwys. v. Nat'l Advertising Co., supra, and the citations given therein.

The facts of this case manifestly require the application of estoppel.

This substantiation as to estoppel is dealt with by considering each of these judicially established elements separately.

(1) Representation by conduct or word: From 1936 until the Jones administration entered office in 1940 the question of fraud in the issuance of state mineral leases, and the acquisition of overriding royalties therein, was an extremely publicized part of the political circumstance. It dominated both the state elections of 1936 and of 1940. It commanded the front pages of newspapers for months at a time during both campaigns.

Following the inauguration of the Jones administration, the election promises became a reality in that intensive investigations and reports dominated State Mineral Board meetings and were the subject matter of letters from Governor Jones to the State Mineral Board and to the Attorney General. Additionally, reports from State Mineral Board investigators to the State Mineral Board, reports from the State Mineral Board to the Attorney General's office, and, finally, legal opinions from the Attorney General's Office to the State Mineral Board preoccupied the respective offices. These activities were front page material in the newspapers of the day.

The Attorney General came to an open break with the State Mineral Board. The Attorney General rendered written reports to the State Mineral Board attesting that after all of the investigations and after the assimilation of all of the materials, it was the considered opinion of the Attorney General's office that there was no probative evidence upon which the legality of the leases could be judicially contested. Both Governor Jones and the State Mineral Board refused to accept their own Attorney General's opinion.

They employed as special counsel, Justin C. Daspit and J. N. Marcantel, to represent the State Mineral Board and the State of Louisiana for the intended purpose of establishing fraud in the issuance of the series of leases which had been acquired by Wm. T. Burton and in which Win or Lose Corporation held overriding royalties. Simultaneously with the employment of the special counsel, the Mineral Board made formal demand for development on various leases (Documents 281-284). These demands resulted in ratification agreements (Documents 350-353).

At about this time, two law suits were filed. In this litigation, the Win or Lose Corporation, Mr. Noe, Mr. Burton and The Texas Company tenaciously defended their position that the leases were properly issued and that these leases were in full force and effect as to the entirety of the properties as described in the leases. Mr. Noe appeared before the State Mineral Board and there denied the charges as made both against him and the Win or Lose Corporation. These lawsuits were vigorously defended in the courts.

According to the testimony of Major Hardey, more than two million acres of state-owned lands as previously covered by mineral leases were surrendered to the State as a result of compromises and the leases and overriding royalties were both ratified and confirmed as to all of their remaining acreage. (Document 297A) The compromise agreement affecting State Lease 340 was executed on November 18, 1943 and was identified by Mr. Couvillon in his deposition. It bears Document number 353 in these proceedings.

It is respectfully submitted that execution of the compromise agreement was "a representation by conduct or word" manifested by the State of Louisiana and, as such forms a basis which requires the application of the principle of estoppel.

Subsequent to execution of the November 18, 1943 compromise agreement. The Texas Company and its successor, Texaco, Inc., as sublessees of Mr. Burton, paid to the State of Louisiana [which the State of Louisiana accepted] more than $50,000,000.00 in royalties from production obtained under the ratified State Leases 340 and 341. Acceptance of such royalties is a second manifestation or "representation by conduct or word" by the State of Louisiana, and, as such also forms a basis for the application of estoppel.

Subsequent to the November 18, 1943 compromise agreement, the State of Louisiana leased (for a second time) to third persons properties which were surrendered by Win or Lose Corporation, Mr. Burton and The Texas Company. The State of Louisiana has received not less than $17,570,655.20 in the form of bonuses, rentals and royalties for such subsequently issued leases. (Document 355) Acceptance of such payments is a manifestation or "representation by conduct or word" by the State of Louisiana which forms another basis for the application of estoppel.

The Outer Continental Shelf Lands Act, 43 USC §1331, et seq., applies to mineral leases issued by the respective states prior to December 21, 1948 and which would have been, on June 5, 1950, "in force and effect" in accordance with the law of the state issuing such leases.

The statute provides the method for determining whether the "in force and effect" requirement of Section 6(a)(2) has been met:

> " * * * (A) a certificate issued by the State official or agency having jurisdiction over such lease stating that it would have been in force and effect as required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect."

Practical reasons impelled Congress to provide that certification of state officials should fulfill the "in force and effect" requirement of Section 6(a)(2). State officials are experienced in dealing with problems of state law, and they are peculiarly well versed in their own state's jurisprudence and regulations with respect to mineral leases. On the basis of similar considerations, the Supreme Court has repeatedly held that a State court's construction of state law is binding on the federal courts, Neblett v. Carpenter, 59 S.Ct. 170, 305 U.S. 297, 302, 83 L.Ed. 182 (1939).

The purpose of Congress in enacting Section 6 of the Outer Continental Shelf Lands Act is entirely consistent with the view that the certification of state officials must be accepted by the Secretary. The general intent of Congress was to provide for the validation of offshore leases which the states regarded as valid prior to the Supreme Court's action in the California, Texas and Louisiana cases.[18] In view of this purpose, it was to be expected that Congress, while prescribing a number of general requirements for validation, would nevertheless vest specific responsibility in the appropriate state officials for determining whether the lease would have been in force and effect under state law.

Nothing in the legislative history of the Outer Continental Shelf Lands Act contradicts the clear provisions of Section 6 or the general intent of Congress to validate leases which state officials regarded as valid. The essential fact is that Section 6 vests responsibility in the appropriate state officials to determine and certify whether the lease was valid under state law.

The fact that the certification by state officials cannot be impeached is of decisive importance in this matter. We are here concerned primarily

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[18] Hearings before Senate Interior and Insular Affairs Committee on S. 1901, 83d Cong., 1st Sess., p. 516-517 (Senator Cordon); 99 Cong. Rec. 7180 (Senator Cordon).

with the 1943 agreement between the State Mineral Board and The Texas Company, Win or Lose Corporation and Wm. T. Burton, for that agreement expresses the full understanding between the contracting parties. The appropriate state officials, in compliance with Section 6(a)(3)(A), have certified that State Lease 340 would have been, on June 5, 1960, "in force and effect in accordance with its terms and provisions and the law of the State of Louisiana had said state had authority to issue said lease." (Document 354) Since the certificate must be accepted by the Secretary of Interior of the United States to establish fulfillment of the requirement of Section 6(a)(2), such acceptance is conclusive as to the validity of the 1943 Agreement.

Therefore, execution of the certification to the Secretary of the Interior of the United States by the Register of the State Land Office of the State of Louisiana and by the Secretary of the State Mineral Board that State Lease 340, "as amended by instrument dated November 18, 1943" was "in force and effect in accordance with its terms and provisions and the law of the State of Louisiana" (Document 354) is the fifth important manifestation or "representation by conduct or word" to form a basis for the application of estoppel.

Subsequent to the November 18, 1943 compromise agreement, the State of Louisiana permitted The Texas Company and its successor, Texaco, Inc., as sublessees of Wm. T. Burton, to make an investment expense on the retained or ratified portions of State Leases 340 and 341 of not less than $772,697,252.00 and refused to lease any portion of the lease retained or ratified acreage to third persons. Such conduct is a sixth manifestation or "representation by conduct or word" and thereby forms another basis for the application of estoppel.

Subsequent to the November 18, 1943 compromise agreement, the State Mineral Board has approved in excess of 200 conveyances, mortgages or similar transactions, involving State Lease 340. (Exhibit C to Joint Stipulation) Such conduct is a seventh manifestation or "representation by conduct or word" which forms a basis for application of estoppel.

A final and eighth such manifestation or "representation by conduct or word" forming the basis for this Honorable Court applying the doctrine of estoppel, is the fact that over thirty years have elapsed since the

execution of the November 18, 1943 agreement, without any suggestion as to its invalidity by the State of Louisiana or its people.

These eight manifestations overwhelmingly substantiate and support the defendants' estoppel argument.

(2) Justifiable reliance: As the second judicially suggested element of estoppel, these defendants were justified in relying upon these eight manifestations or "representations by conduct or word" outlined above.

Act 53 of 1942 conclusively established that the State Mineral Board has jurisdiction over state mineral leases with full authority to make amendments thereto. Accordingly, the defendants herein were justified in relying upon the actions of the State Mineral Board as mandatary of the State of Louisiana in dealing with the state mineral leases. Legally, only the State Mineral Board had authority to enter into this compromise agreement. With the November 18, 1943 agreement viewed in the perspective of the highly controversial investigation by the Attorney General's Office and by the State Mineral Board, and as overshadowed by the personal interest of Governor Jones, the conclusion is inescapable--defendants herein were entirely justified in relying upon the November 18, 1943 legally confected compromise agreement.

Additionally, defendants were justified in relying upon the execution of the certificate to the Secretary of Interior of the United States by the appropriate state officials certifying that State Lease 340, "as amended by instrument dated November 18, 1943," as being in full accord with the Outer Continental Shelf Lands Act. Defendants were entirely justified in relying upon such official proceedings of the United States Department of Interior as official acts of the Register of State Lands Office and Secretary, State Mineral Board.

The appropriate state officials charged by law with a supervisory role in state leasing were aware of the legal problems and legal consequences involved in the various grounds available for recovery of the mineral leases and the overriding royalties in such leases as owned by Win or Lose Corporation. These state officials were aware that various courses of action to recover the leases could be mutually exclusive. For example, the State Mineral Board discussed the possibility that demands for development could recognize the validity of the leases thus precluding a suit to recover

the leased acreage on the basis of fraud. For instance, in two letters, dated May 22, 1943, and August 26, 1943 from Mr. Couvillon to Major Hardey this exact issue was discussed. (Documents 257 and 293). The fact that, in the Attorney General's opinion, demand for development would preclude any suit alleging improper leasing arrangements, was widely reported by the newspapers. (Documents 256 and 276)

The Attorney General's Office also specifically pointed out that the State would be estopped to recover the leases because of the State's acceptance of rentals and royalties. The Attorney General's Office repeatedly advised the State Mineral Board that in its opinion the validity of State Lease 309 had been recognized by its subsequent amendment as a result of the issuance of State Lease 494.

On May 20, 1943 The New Orleans States included the following:

> "Stanley surprised the mineral board by disclosing that the board, in his opinion, had in granting a lease in July, 1941, validated one of the earlier questioned leases, No. 309, which had been granted by Governor Allen to Noe on state land in waterbottoms in the Monroe gas field."
>
> * * *
>
> "By accepting the benefits of state lease No. 309, and the amendment thereto, and making a new lease on acreage which reverted back to the state, under the terms of the original lease No. 309, and its amendment, the State of Louisiana has ratified the validity of state lease No. 309, and its amendment." (Document 246)

The Attorney General's Office was very much concerned that approval of assignments of interests in the leases would preclude subsequent attacks on the leases. This was evidenced in its correspondence:

> "In order that the State or the Mineral Board might not be put in the position of approving an assignment of a lease and then subsequently attacking said lease, may we suggest that in the event such a request for approval is received by the Mineral Board, with reference to any of the above numbered leases, that this office and the undersigned be advised of said request before the approval is granted." (Letter dated July 15, 1940 from Philip Gensler to State Mineral Board, Document 165).

Since the State officials were concerned that their conduct would be relied upon to form a basis for the application of estoppel, defendants herein were entirely justified in relying upon such conduct themselves.

The Attorney General's Office refused to file suit on any of the state mineral leases issued to Wm. T. Burton and in which Win or Lose Corporation owned overriding royalty interests for it believed such litigation would not be successfully concluded. The State Mineral Board rejected

these legal conclusions of the Attorney General and employed special counsel with instructions to take action on all leases where "suspicious circumstances" had been alleged. Special counsel filed only two suits, one on State Lease 309 and the other on State Lease 318. Both of these suits were dismissed with prejudice in accordance with the overall settlement of the controversy by the parties. Thus, a settlement of the litigation concerning State Leases 309 and 318, when coupled with the fact that no litigation was instituted on any other leases, is conclusive evidence that defendants herein were justified in relying upon the actions, activities and conduct of the state officials.

A final and equally important and continuing factor supporting defendants' position, that they were justified in their reliance upon the official conduct of the state officials, has been the acceptance of royalties by the State of Louisiana from these same leases and on a monthly basis for over 30 years.

It is respectfully submitted that defendants herein were legally justified in their continuing reliance upon the manifestations or "representations by conduct or word" of the various state officials which formed the basis of application of estoppel herein.

(3) A change in position to cause detriment because of one's reliance: The final element of estoppel, i.e., that defendants changed their position [gave up acreage] to their detriment because of the reliance [as to the validity of the leases on the remaining acreage] is also clearly present. Prior to the November 18, 1943 compromise agreement, defendants held overriding royalties on all of the properties described in State Lease 340 and were steadfastly defending their position that all of the leases were valid. In reliance upon the authority of the State Mineral Board to enter into the compromise agreements, defendants surrendered their overriding royalties on more than a million acres of properties which had been previously a part of these state mineral leases.

Through his sublessee, Mr. Burton caused to be paid to the State of Louisiana more than $50,000,000.00 in royalties on State Leases 340 and 341. Likewise, The Texas Company and its successor, Texaco, Inc., made an investment expense of more than $772,697,252.00 in the development of State Leases 340 and 341. (Document 355) Many of the defendants en-

tered into innumerable agreements including mortgages as to the acreage under State Leases 340 and 341 as ratified by the State Mineral Board in the November 18, 1943 agreement. Thus, defendants have irrevocably changed their position in reliance upon the conduct of these state officials. The rights of third parties have intervened and it would be a legal and practical impossibility to restore defendants to their original position. As evidence of the fact that defendants were relying upon the conduct of the state to bring the controversy to a final conclusion is a letter dated September 7, 1943 from W. W. Thompson, attorney for Wm. T. Burton, to Charles H. Blish, attorney for The Texas Company, which included the following:

> "I would like to know whether it is your idea that any action that might be taken now will set at rest, from a legal standpoint, the contention that has heretofore been made in some quarters that the leases are void from the beginning. I have repeatedly seen newspaper articles, editorials, etc., claiming, for no definite reason, that the leases are void, in their entirety. Some State Officials seemed to have the same viewpoint. If the questioning of the validity of the leases is to be continued, for my own part, I do not see the wisdom of surrendering a part of them now. In other words, if the Mineral Board contends that some of the acreage should be released because of non-development, and this is done, possibly next year, it will want another part surrendered because some certain off-set wasn't drilled in 1942. I know that if an individual was the Lessor and you consented to release a part of a leasehold under the same circumstances, you would expect him to ratify the present legal existence of the lease on that retained." (Document 294)

It is respectfully submitted that each and every element of estoppel is clearly present in the instant case. As such, they preclude successful prosecution of this suit by plaintiff herein.

On two previous occasions, the Louisiana Supreme Court has applied estoppel against attacks on state mineral leases in cases where the elements of estoppel were not as compelling as in the instant case. In State, Ex Rel Shell Oil Company v. Register of State Land Office, 192 So. 519, 193 La. 883 (1939), the Louisiana Supreme Court applied the doctrine of estoppel against the State of Louisiana in a case involving an attack on State Lease 214. The Supreme Court ruled as follows:

> "It is well settled that the doctrine of estoppel applies to the State just as it does to individuals.
>
> "The Federal Circuit Court of Appeals for the Fifth Circuit, in which the State of Louisiana is included, recognized the doctrine of estoppel in Police Jury of Richland Parish v. Caldwell & Company, 26 F. 2d 74, 75. In that case the Police Jury took the position that Caldwell & Company was not entitled to certain

interest, and other benefits under bonds it had acquired, because it alleged that the manner of acquiring the bonds was irregular and unconstitutional.

"The court said: 'In this case we are of opinion that the question whether the contract or statutes is in violation of the Constitution is immaterial. That question would doubtless be an important one, if the contract for the sale and purchase of bonds were executory. But here the contract has been fully and completely performed. If it were between individuals, they would be estopped to attack it as invalid. In our opinion, the parish, having received the benefits of the contract, is estopped to escape its burdens. In order to recover unearned interest, it would be obliged to return the proceeds of the bonds it has received, and that it does not offer to do. The contract will have to be enforced as the parties made it. It cannot be assumed that Caldwell & Co. would have accepted the bonds upon any other terms than those agreed upon. In Louisiana the doctrine of estoppel applies to the state and its subdivisions, to the full extent that it does to individuals. State v. Cockrem, 25 La.Ann. 356; State v. Taylor, 28 La.Ann. 460; State v. Ober, 34 La.Ann. 359; State v. New Orleans, etc., R. Co., 104 La. 685, 29 So. 312; Gilmore v. Schenck, 115 La. 386, 39 So. 40; Clark v. City of Opelousas, 147 La. 1, 84 So. 433. (Italics ours [Court])'"

* * *

"The Governor of the State of Louisiana, at the time of granting the lease in question, was authorized to do so by Act No. 30 of 1915, Ex.Sess., as amended by Act No. 315 of 1926. The Register of the Land Office was authorized to receive payments under such leases. Therefore, in granting the lease and accepting the payments, these officials were exercising a granted power. There was no absence or want of power or authority in the officials acting on behalf of the State, but merely a partial failure of two of the newspapers to comply with a formality."

* * *

"It is now ordered that the plea of estoppel herein tendered by relator, Shell Oil Company, Incorporated, be and is hereby maintained."

Likewise, the doctrine of estoppel was applied against the State of Louisiana in the case of Reeves v. Leche, 195 So. 542, 194 La. 1070 (1940), involving State Lease 338. In reiterating the application of the doctrine of estoppel as to a state lease, our Supreme Court ruled as follows:

"The State has made no tender to the lessee of the money received by the State under the lease. Under the admitted state of facts, it is clear that defendants are estopped from asserting the invalidity of State Lease No. 338 by their reconventional demand or otherwise.

"As the obligations of the lessee have been fully complied with under the terms of the lease, the lease has become an executed contract. The State has accepted the benefits of the lease for several years in receiving the sum of $500, paid by the lessee as bonus and rentals, and neither law, equity nor good conscience will allow the State to claim the benefits and at the same time escape its obligations under the lease.

"In State ex rel. Shell Oil Company, Inc., v. Register of the

State Land Office, 193 La. 883, 192 So. 519, this court held that:

'The state and the Register of the State Land Office, after accepting rental payments under oil, gas and mineral lease for several years were estopped to deny validity of the lease because of irregularities in publishing notice of the letting.'

"For the reasons assigned, it is ordered, adjudged and decreed that the judgment appealed from be annulled and reversed.

"It is now ordered, adjudged and decreed that the plea of estoppel tendered by plaintiffs and filed in this court on December 1, 1939, be and the same is hereby maintained, and that defendants, Earl K. Long, Governor of Louisiana, the State Mineral Board, and Lucille May Grace, Register of the State Land Office, be and are hereby estopped from attacking the validity of that certain oil, gas and mineral lease, No. 338, executed on the 23rd day of January, 1936, by the State of Louisiana to J. H. Reeves, and covering the property described therein, situated in the Parish of Pointe Coupee and in the Parish of Iberville within this State."

Again, in State v. Texas Co., 30 So.2d 107, 211 La. 326 (1947), the Louisiana Supreme Court followed its earlier holdings and applied the doctrine of estoppel against the State of Louisiana in a lawsuit involving State Lease 356.

It is respectfully submitted that each and every issue involved in the application of the doctrine of estoppel is clearly and convincingly present in this case. The doctrine of estoppel insofar as State Lease 340 is concerned is founded upon the written compromise agreement of November 18, 1943. Estoppel is equally applicable to State Lease 341 even without a specific written compromise agreement. State Lease 341 was closely scrutinized during the investigations by both the State Mineral Board and the Attorney General's office; as previously reflected in this memorandum, no state officials ever considered State Lease 341 to be the subject of fraudulent conduct or action. A written compromise agreement was thus unnecessary. All aspects of estoppel apply equally to State Leases 340 and 341.

CONCLUSION

Although the plaintiff's allegations, if true, would be serious, the defendants have diligently and effectively developed, prepared and submitted an irrefutable record upon which they stand in defense of this litigation. The time and cost to which these defendants have been put in

defense of this litigation, in the development of facts and factors which occurred before the lifetime of most Louisiana residents, is in itself a heavy burden to bear. The necessity of a major trial of monthly duration is unjustified and unnecessary for it is the belief of the defendants that no more can or need be said, other than that which has been said within the documentary evidence presented in support of the motion for summary judgment.

The record of this case leads to no other conclusion than:

(A) The state mineral leases involved in this case were issued in accordance with the law in effect at the time and neither fraud nor conspiracy was involved.

(B) During the relevent period of time, there was no prohibition against defendants or their respective ancestors in title acquiring an interest in state mineral leases.

(C) The release and compromise agreements between the State Mineral Board, The Texas Company, Mr. Burton and Win or Lose Corporation (Independent Oil and Gas Company, Inc.) in 1943 bar prosecution of this suit.

(D) Prosecution of this suit is barred by the well recognized and judicially accepted principle and doctrine of estoppel.

As a matter of law, since there is no genuine issue as to material fact, the motion for summary judgment should be granted and this action dismissed with prejudice.

All of the above and foregoing is thus respectfully submitted.

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